

## **METROPOLITAN AREA PLANNING COMMISSION**

### **MINUTES**

**March 18, 2010**

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, March 18, 2010, at 1:30 P.M., in the Planning Department Conference Room, 10<sup>th</sup> floor, City Hall, 455 North Main, Wichita, Kansas. The following members were present: G. Nelson Van Fleet, Chair; Debra Miller Stevens, Vice Chair; Shawn Farney; Darrell Downing; David Foster (In @ 1:31 P.M.); Bud Hentzen; Hoyt Hillman; Don Klausmeyer; Ronald Marnell; M.S. Mitchell and Don Sherman (In @ 1:37 P.M.). David Dennis; Joe Johnson and John W. McKay, Jr., were absent. Staff members present were: John Schlegel, Director; Dale Miller, Current Plans Manager; Donna Goltry, Principal Planner; Bill Longnecker, Senior Planner; Neil Strahl, Senior Planner; Derrick Slocum, Associate Planner; Joe Lang, Chief Deputy City Attorney; Bob Parnacott, Assistant County Counselor and Maryann Crockett, Recording Secretary.

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1. Approval of the March 4, 2010 MAPC meeting minutes

**MOTION:** To approve the March 4, 2010 minutes, as amended.

**DOWNING** moved, **MARNELL** seconded the motion, and it carried (8-0-1).

**HILLMAN** – Abstained.

**FOSTER** (In @ 1:31 P.M.)

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2. **CONSIDERATION OF SUBDIVISION COMMITTEE RECOMMENDATIONS**

- 2-1. **SUB 2009-85: Final Plat -- SOUTH MERIDIAN ODOR CONTROL FACILITY**  
**ADDITION**, located on the east side of Meridian, north of 47th Street South.

**NOTE:** This is an unplatted site located within the City. A Conditional Use (CON 2009-38) for a Major Utility has been approved subject to platting.

#### **STAFF COMMENTS:**

- A. City of Wichita Water Utilities Department advises that water is available. Sewer is not available and will not be required due to the use of the building.
- B. If improvements are guaranteed by petition(s), a notarized certificate listing the petition(s) shall be submitted to the Planning Department for recording.
- C. City Stormwater Engineering has approved the applicant's drainage plan.
- D. Additional right-of-way along Meridian has been platted as requested by Traffic Engineering.
- E. Access control has been approved by Traffic Engineering.
- F. The applicant is advised that the truck unloading area as denoted on the site plan may require a minor

street privilege permit at the time of development.

- G. This property is within a zone identified by the City Engineers' office as likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Building with specially engineered foundations or with the lowest floor opening above groundwater is recommended, and owners seeking building permits on this property will be similarly advised. More detailed information on recorded groundwater elevations in the vicinity of this property is available in the City Engineers' office.
- H. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- I. County Surveying requests a dimension on the 25-foot building setback.
- J. The correct plat name needs to be denoted on the surveyor's certificate.
- K. The platting text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- L. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- M. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- N. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the United States Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- O. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- P. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State National Pollutant Discharge Elimination System Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- Q. Perimeter closure computations shall be submitted with the final plat tracing.
- R. A compact disc (CD) should be provided, which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. If a disc is not provided, please send the information via e-mail to Cheryl Holloway (E-Mail address: [cholloway@wichita.gov](mailto:cholloway@wichita.gov)). Please include the name of the plat on the disc.

**MOTION:** To approve subject to the recommendation of the Subdivision Committee and staff recommendation.

**MARNELL** moved, **MITCHELL** seconded the motion, and it carried (9-0).

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**2-2. SUB 2010-14: One-Step Final Plat -- WOODS NORTH 2ND ADDITION**, located south of 29th Street North, west of 127th Street East.

- A. Wichita Water Utilities Department advises that water and sewer services are available. The applicant is advised that for Lot 13, one riser needs closed at time of development. City Engineering advises that existing special assessments will be recalculated on a square foot basis unless a Respread Agreement is filed with the Finance Department and approved by the Law Department.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- C. City Stormwater Engineering has approved the drainage plan along with the four-corner lot grading plan. The minimum pad elevation for Lots 5-10, Block A needs revised to 1386.
- D. County Surveying requests that the dimensions along the east line of Reserve C are moved to the east line of Lots 3, 4 & 5, Block A.
- E. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- F. For those reserves being platted for drainage purposes, the required covenant that provides for ownership and maintenance of the reserves, shall grant to the appropriate governing body the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- G. Since this plat proposes the platting of narrow street right-of-way with adjacent "15-foot street drainage and utility easements," a restrictive covenant shall be submitted which calls out restrictions for lot-owner use of these easements. Retaining walls and change of grade shall be prohibited within these easements as well as fences, earth berms and mass plantings.
- H. The applicant shall submit a covenant that provides four (4) off-street parking spaces per dwelling unit on each lot that abuts a 32-foot street. The covenant shall inventory the affected lots by lot and block number and shall state that the covenant runs with the land and is binding on future owners and assigns.
- I. On the final plat tracing, the MAPC signature block needs to reference "G. Nelson Van Fleet" as Chair.
- J. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- K. The platting text shall include language that a drainage plan has been developed for the plat and that

all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.

- L. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- M. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- N. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- O. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- P. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- Q. Perimeter closure computations shall be submitted with the final plat tracing. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- R. Westar Energy advises that existing equipment is located in the platted area. Any relocation or removal of the existing equipment will be at the applicant's expense. Please contact Reed Holbrook in Construction Services 261-6360.
- S. A compact disc (CD), which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. If a disc is not provided, please send via e-mail to Cheryl Holloway (E-Mail address: [cholloway@wichita.gov](mailto:cholloway@wichita.gov)). Please include the name of the plat on the disc.

**MOTION:** To approve subject to the recommendation of the Subdivision Committee and staff recommendation.

**MARNELL** moved, **MITCHELL** seconded the motion, and it carried (9-0).

**SHERMAN** (In @1:37 P.M.)

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### 3. **PUBLIC HEARING – VACATION ITEMS**

#### **PUBLIC HEARINGS**

4. **Case No.: CON2009-43** (Deferred from January 7, 2010 MAPC Hearing) - City of Wichita – Water Utilities c/o Deb Ary (owner/applicant), PEC, PA, c/o Rob Hartman (agent) requests City Conditional Use Amendment #1 to CU-564 to permit construction of communication tower for ASR facility on property zoned SF-5 Single-Family Residential on property described as:

A portion of Lot 1, Block 1, Sewage Treatment Plant No. 3 (NW) Addition, to Wichita, Sedgwick County, Kansas; more particularly described as follows:

Commencing at the Northeast corner of Lot 1, Block 1, Sewage Treatment Plant No. 3 (NW) Addition, to Wichita, Sedgwick County, Kansas; thence bearing S88°13'24"W, along the North line of said Lot 1, 418.00 feet; thence bearing S00°36'57"W, parallel with the East line of said Lot 1, 150.00 feet, to the point of beginning; thence continuing on a bearing of S00°36'57"W, a distance of 80.00 feet; thence bearing S88°13'24"W, a distance of 170.00 feet; thence bearing N00°36'57"E, a distance of 80.00 feet; thence bearing N88°13'24"E, a distance of 170.00 feet, to the point of beginning, generally located midway between 37th and 45th Streets North, on the east side of 135th Street West.

**BACKGROUND:** The City of Wichita – Water Utilities (WWU) is seeking to amend CU-564, a Conditional Use that permits a major utility, the Northwest Wastewater Treatment Plant, that is located on land zoned SF-5 Single-family Residential ("SF-5"). This application, amendment #1 to CU-564, would allow the construction of a 150-foot tall, galvanized steel, lattice, self-supporting, microwave communication tower. The 70-foot (x) 80-foot tower site is located in Parcel 1 of the approximately 145-acre Sewage Treatment Plant #3 (NW) Addition, located midway between 37<sup>th</sup> and 45<sup>th</sup> Streets North on the east side of 135<sup>th</sup> Street West. New wireless communication facilities over 65 feet in height in the SF-5 zoning district may be permitted with a Conditional Use.

The applicant has indicated (see attached exhibit #1) that the proposed facility is needed to provide constant remote monitoring and control of all planned and future Aquifer Storage and Recovery ("ASR") facilities and water production. These facilities include City Hall and the Main Water Treatment Plant (located northwest of downtown Wichita), two (2) surface water treatment plants, two (2) maintenance facilities, over 50 wells and pipeline valves, and diversion wells along the Little Arkansas River. The ASR project diverts and treats surplus water from Little Arkansas River for recharge of the Equus Beds aquifer, a source of water for the City of Wichita and the region. The applicant has referenced the Federal Drinking Water Security Act of 2009, which requires water treatment facilities to implement the same standards of security as chemical facilities. The WWU's Northwest Wastewater Treatment Plant does not allow unauthorized access, and the proposed tower will improve management and security of the facility by better communication technology. This standard of controlled access eliminates co-location of the WWU's antennas on existing towers in the area and will prevent co-location of other communication antennas on the WWU's proposed tower.

The area around the site is mostly active agricultural fields, broken up by the Cowskin creek and its flood zone/wetlands and hedges of trees. There are scattered single-family residences/farm houses (approximately 11, built 1880 – 2006) located 1/4-mile or more from the site. All the surrounding properties are zoned RR Rural Residential ("RR"), with the exception of agricultural land within the city limits of Maize that abut the site's east side.

The site plan shows the tower to be located within the WWU's existing Northwest Wastewater Treatment Plant facility, Parcel 1. The site plan shows the tower site to be setback at least 150 feet from abutting properties; the site meets the compatibility height standards for a wireless facility. This facility is gated with solid screening, landscaping and berms around it; the site meets the screening and landscaping

requirements. The tower site will also be screened by the treatment plant's existing buildings, as well as being located a maximum distance from the area's existing single-family residences. The rest of the 145-acre City of Wichita owned property is shown as proposed and existing parks with proposed and existing fishing ponds and proposed and existing public wetlands.

The proposed tower and associated communication frequencies and wattages must meet standards determined by the Federal Aviation Administration (FAA) to pose no hazard to air navigation. The applicant has not provided an analysis of airspace in the area, which must be provided to staff prior to building permits being issued. The applicant has not provided any proposed lighting of the tower, which must meet the FAA requirements or aircraft warning. Section Art. III Sec. III-D.6.g.(5) of the UZC prohibits strobe lighting. The proposed galvanized surface of the tower will blend into the sky more readily than a red or white paint, which meets the intent of the "Design Guidelines" of the "Wireless Communication Master Plan." As noted the proposed tower will not allow co-location for other communication antennas, because of Federal mandated security standards. Art. V Sec. V-D.6. of the UZC allows the City Council to modify Supplementary Use Regulations upon receiving a favorable recommendation from the MAPC.

**CASE HISTORY:** The site was annexed into the City of Wichita in 1999, at that time the site's RR zoning became SF-5. The site was platted as Sewage Treatment Plant #3 (NW), recorded August 15, 2000. CU-564 was adopted February 10, 2000, for a wastewater treatment plant (major utility). This case was considered by the MAPC at their January 7, 2010 meeting. The MAPC's recommendation was to defer the item until Water Utilities provides proper documentation and/or information as to why a monopole would not be effective at this location.

**ADJACENT ZONING AND LAND USE:**

NORTH:	RR	Agriculture field
SOUTH:	SF-5	Cowskin creek/flood zone/wetland, proposed park, single-family residences
EAST:	City of Maize	Agriculture field
WEST:	RR	Agriculture field, Cowskin creek/flood zone, single-family residences

**PUBLIC SERVICES:** Although no municipally supplied public services are required, all utilities are available to the site. The site has access to 135<sup>th</sup> Street West, a paved two-lane county highway. The 2030 Transportation Plan shows no change to the current status of this road.

**CONFORMANCE TO PLANS/POLICIES:** The Wireless Communication Master Plan is an element of the Comprehensive Plan that outlines the guidelines for locating wireless communication facilities. The Location Guidelines of the Wireless Communication Master Plan requires a Conditional Use for new undisguised ground mounted facilities over 65 feet in height in the SF-5 zoning district, that comply with the compatibility setback standards. The Design Guidelines of the Wireless Communication Master Plan indicate that new facilities should: 1) preserve the pre-existing character of the area as much as possible; 2) minimize the height, mass, or proportion; 3) minimize the silhouette; monopoles are favored over lattice type structures for up to 150 feet and antennas mounted flush to the support structure over triangular "top hat" antenna arrays; 4) use colors, textures, and materials that blend in with the existing environment; 5) be concealed or disguised as a flagpole, clock tower, or church steeple; 6) be placed in areas where trees and/or buildings obscure some or all of the facility; 7) be placed on walls or roofs of buildings; 8) be screened through landscaping, walls, and/or fencing and 9) towers painted red and white instead of using strobe lighting. The application appears to meet most of these considerations.

This proposed amendment #1 would allow a 150-foot tall galvanized steel, lattice, self-supporting, microwave communication tower. The tower would be an accessory facility used to provide constant remote monitoring and control of all planned and future ASR facilities and water production. The ASR project diverts and treats surplus water from the Little Arkansas River for recharge of the Equus Beds

aquifer, a source of water for City and the region. The proposed tower and its use provides a needed refinement to the ASR project to ensure future water sources needed for the continued health, safety and growth of the City of Wichita and the area. The proposed tower is not out of character with the area's or Sedgwick County's rural character, as communication towers have become a more common landscape feature in response to the growth of communication technologies.

**RECOMMENDATION:** Water Utilities (Water) has provided (Exhibit 1) an explanation for requesting a 150-foot tall lattice tower over a monopole. Water's tower will be part of a microwave signal network that operates via point-to-point links between control-monitoring locations. Water has stated that this microwave signal requires a tower with a much lower tolerance for deflection/sway by wind or by asymmetrical solar heating (stated as the 99.9% reliability standard), than your typical broadband signal used by cell phone services. Water acknowledges a monopole tower can be built that meets the needed 99.9% reliability standard, but that its profile presents a greater mass than a lattice tower. Water notes that the Wireless Master Plan's Design Guidelines, Sec. VI-B recommends: "Minimizing the silhouette presented by the new support structure and antenna arrays. Generally monopoles are favored over the lattice-type tower support structures to a height of at least 150 feet, and antennas mounted flush to the support structure are favored over triangular 'top hat' antenna arrays." and "Minimizing the height, mass or proportion of the facility to minimize conflict with the character of its proposed surroundings." Water has presented several exhibits contrasting a 150-foot tall monopole used for a broadband signal (swaged or slip joint construction), a 150-foot monopole used for the microwave signal (bolted-flanged construction) and a 150-foot self-supporting lattice tower used for the microwave signal. As represented, the monopole used for broadband signals presents a less obtrusive mass and silhouette than the other two towers. In the opinion of staff, the differences between the mass and silhouette of the self-supporting lattice tower and the monopole built for the microwave signal can be seen as minimal in regards to their impact with the character of the immediate area.

Water does note that there are significant cost savings in constructing a self-supporting lattice tower as opposed to a monopole for their microwave signal network and presents an estimate of the money saved. The same consideration could be applied for constructing a lattice tower as opposed to a monopole for a broadband signal. However, the most recent amendment to the Wireless Master Plan eliminated economic feasibility as a requirement, thus within this context the contrast in the cost of construction between the two types of towers for the microwave signal is not critical.

The Wireless Master Plan (Sec. III-C, 2) states that Wichita/Sedgwick County and other public and governmental agencies should not locate any facilities that contravene guidelines that wireless communication facilities are held to in this Plan; the regulatory authority cannot be held less accountable than the private sector in the name of "public safety." A case can be made that cell phone service provides services that can be considered public safety. However, the UZC allows Conditional Uses to be considered on a case by case basis. Section II of the Wireless Plan recognizes that wireless facilities can be considered on a case by case basis. As presented by Water, this specific case involves a microwave signal network that operates via point-to-point links between control-monitoring locations, which requires tower structural considerations that are not required for a broadband signal. As presented by Water, and in the opinion of staff, the differences between the mass and silhouette of the self-supporting lattice tower and the monopole built for the microwave signal can be seen as minimal in regards to their impact with the character of the immediate area. A greater potential impact on development in the immediate area is the existing Northwest Wastewater Treatment Plant, where the proposed tower will be located. In the opinion of staff, Water's presentation on this specific case (including its location in an area rural in character, on an isolated SF-5 zoned City property and major utility, on the outer edge of the 2030 growth areas for the cities of Maize and Wichita) does not aim to circumvent the Master Plan's standard of equal accountability between a government agency/the regulatory authority and the private sector, but attempts to provide the most reliable structure for a microwave signal network that operates via point-to-point links between control-monitoring locations, and whose mass and silhouette has a minimal impact on the immediate area. As required by the UZC and the Wireless Master Plan, all future requests made by other public and governmental agencies and the wireless industry will be considered by a case by case basis.

Based upon these factors and the information available prior to the public hearing, planning staff recommends that amendment #1 of CU-564 be APPROVED subject to the following conditions:

- A. Allow a 150-foot tall, galvanized steel, lattice, self-supporting, microwave communication tower. The 70-foot (x) 80-foot tower site shall be located in CU-564's Parcel 1, of Lot 1, Block 1, the Sewage Treatment Plant #3 (NW) subdivision.
- B. All requirements of Art. III Sec. III.D.6.g. of the Unified Zoning Code shall be met, with the exception of waiving the co-location requirement; Art. III Sec. III.D.6.g-8.
- C. The applicant shall obtain all permits necessary to construct the wireless communication facility, and the wireless communication facility shall be erected within one year of approval of the Conditional Use by the MAPC or governing body, as applicable.
- D. The support structure shall be a "lattice" design that generally conforms to the approved site elevation and that is silver or gray or a similar unobtrusive color with a matte finish to minimize glare. Antennas mounted flush to the support structure are preferred over triangular "top hat" antenna arrays and the applicant needs to demonstrate why the "flush" arrangement does not work.
- E. The tower shall be lighted per FAA regulations. The applicant shall submit a current copy of FAA approval to the MAPD and the Code Enforcement Office prior to the issuance of a building permit.
- F. The tower site located within Parcel 1 of CU-564 (Sewage Treatment Plant #3 (NW) Addition) shall be developed in general conformance with the approved site plan.
- G. The site shall be developed and operated in compliance with all federal, state, and local rules and regulations.
- H. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

This recommendation is based on the following findings:

- 1. The zoning, uses and character of the neighborhood: The area around the site is mostly active agricultural fields, broken up by the Cowskin creek and its flood zone/wetlands and hedges of trees. There are scattered single-family residences/farm houses (approximately 11, built 1880 – 2006) located 1/4-mile or more from the site. All the surrounding properties are zoned RR Rural Residential ("RR"), with the exception of agricultural land within the city limits of Maize that abut the site's east side.
- 2. The suitability of the subject property for the uses to which it has been restricted: CU-564, a Conditional Use for a major utility, specifically the Northwest Wastewater Treatment Plant was adopted in 2000. This wastewater facility established a major public utility in the area, which provides an essential service to the area. A Conditional Use may permit a wireless communication facility in the RR zoning area, with conformance to the UZC and the Wireless Communication Master Plan. The proposed facility conforms to most of those guidelines. The tower would be an accessory facility used to provide constant remote monitoring and control of all planned and future ASR facilities and water production at the site.
- 3. Extent to which removal of the restrictions will detrimentally affect nearby property: Detrimental effects on the RR zoned properties and agricultural activities in the area should be minimized to a degree by the Conditional Use standards of the UZC, which should limit noise, lighting, and other activity from adversely impacting these properties. Improvements to the communication technologies at the facility will benefit the region. The area needed to be developed for the site is confined within the existing Northwest Wastewater Treatment Plant facility, which in turn is located within the City owned 145-acres planned for parks, fishing ponds and wetlands; the tower site is the smallest proposed development in the 145-acres, which serves as a buffer for the area's agricultural lands. The proposed tower is not out of character with the area's or Sedgwick



County's rural character, as communication towers have become a more common feature throughout both the City and County in response to the growth of communication technologies. As presented by Water, and in the opinion of staff, the differences between the mass and silhouette of a self-supporting lattice tower and a monopole built for the microwave signal can be seen as minimal in regards to their impact with the character of the immediate area. As previously stated in staff's opinion a greater impact on the immediate area is the existing Northwest Wastewater Treatment Plant, where the proposed tower will be located.

4. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The Wireless Communication Master Plan is an element of the Comprehensive Plan that outlines the guidelines for locating wireless communication facilities. The Location Guidelines of the Wireless Communication Master Plan requires a Conditional Use for new undisguised ground mounted facilities over 65 feet in height in the SF-5 zoning district, that comply with the compatibility setback standards. The Design Guidelines of the Wireless Communication Master Plan indicate that new facilities should: 1) preserve the pre-existing character of the area as much as possible; 2) minimize the height, mass, or proportion; 3) minimize the silhouette; monopoles are favored over lattice type structures for up to 150 feet and antennas mounted flush to the support structure over triangular "top hat" antenna arrays; 4) use colors, textures, and materials that blend in with the existing environment; 5) be concealed or disguised as a flagpole, clock tower, or church steeple; 6) be placed in areas where trees and/or buildings obscure some or all of the facility; 7) be placed on walls or roofs of buildings; 8) be screened through landscaping, walls, and/or fencing and 9) towers painted red and white instead of using strobe lighting. The application appears to meet most of these considerations.

This proposed amendment #1 would allow a 150-foot tall galvanized steel, lattice, self-supporting, microwave communication tower. The tower would be an accessory facility used to provide constant remote monitoring and control of all planned and future ASR facilities and water production. The ASR project diverts and treats surplus water from Little Arkansas River for recharge of the Equus Beds aquifer, a source of water for City and the region. The proposed tower and its use provides a needed refinement to the ASR project to ensure future water sources needed for the continued health and growth of the City of Wichita and the area. The proposed tower is not out of character with the area's or Sedgwick County's rural character, as communication towers have become a more common feature in the City and County in response to the growth of communication technologies.

5. Impact of the proposed development on community facilities: FAA approval should ensure that the proposed tower does not detrimentally impact the operation of airports in the vicinity. The tower would be an accessory facility used to provide constant remote monitoring and control of all planned and future ASR (public) facilities and water production.

**BIL LONGNECKER**, Planning Staff presented the Staff Report.

**FOSTER** complimented staff on the information provided which addressed aesthetics as well as cost. He said he would support staff's recommendation. He asked if this issue would cause staff to look at the Wireless Communication Master Plan again.

**LONGNECKER** said this could open up dialogue between the private sector and Planning staff on the issue of lattice versus monopoles at other cell tower sites. He said the Wireless Communication Master Plan directs that cost is not a factor to be considered in the application process but rather the silhouette and mass and how a proposed tower will impact an area. He said because this tower falls under the Federal Water Securities Act there will be no other antennas or co-locators on it, which is not the case with broadband towers that provide cell phone service and have co-location requirements. He said the merits of monopoles versus lattice towers are usually decided on a case-by-case basis.

**MITCHELL** referred to the Staff Report regarding security and asked where the proposed park was located with respect to this site.

**LONGNECKER** referred to the site plan. He said the tower will be located within the walls and fences of the water treatment plant. He said the area is defined by a wall, fence and gate. He said the rest of the site, which includes a fishing pond, is open to the public.

**MITCHELL** asked how this site is different from the fenced area around the base of any tower.

**LONGNECKER** said there was very little difference.

**MARNELL** referred to the consultant's report which he said mentioned that a monopole would cost \$128,000 or 2 ½ times more than a lattice structure. He asked if that was for a standard monopole?

**LONGNECKER** said this particular monopole will have to have a certain structural integrity.

**PAUL JOHNSON, PROJECT ENGINEER, R. W. BECK**, part of the program management team for the Aquifer Storage and Recovery (ASR) Phase II Project introduced himself and **RICHARD EMANUEL, PROJECT MANAGER, CH2MHILL, INC.** project designer, who he said was present to answer any technical questions on the proposed system.

**MARNELL** said he understood that they were particularly concerned with sway from a standard monopole antenna in the design of this microwave path. He asked Mr. Emanuel to explain why 8 inches of sway would be of a concern. He clarified not twist or torque, but sway.

**EMANUEL** said the concern is that the point-to-point microwave is a low power signal with a very narrow beam (1½ beam width) so if the top of the tower, which will have two six-foot parabolic antennas on it, moves slightly it will take the beam off of the receiving tower at the other end and the signal will be lost.

**MARNELL** asked if the Planning Commission approves this request with a monopole and the case goes to the City Council, can the Council decide to go the cheaper way with a lattice tower and overrule the Planning Commission's recommendation.

**JOE LANG, CHIEF DEPUTY CITY ATTORNEY** said yes, the City Council by a two-thirds vote can modify any decision of the Planning Commission. He said since this is a conditional use, it will require an appeal or protest to get the case to the City Council.

**MARNELL** said with all due respect, moving the beam a few inches one way or the other is not going to make an appreciable difference at the other end. He said what will make a difference is a twist or torque at the tower. He said one of the advantages of cellular monopole pipes is that they are extremely resistant to torque. He said a triangle or square, like a lattice tower on the other hand can torque very easily whereas a circle has a hard time torqueing. He said he guessed they had a significant fade margin built into the paths as well as other options for design if they were concerned with it. He said with a monopole, if you changed the antennas from six-foot to two-foot, the tower could take all kinds of movement and it still won't cause any problems. He said if there was a decibel loss because of the change from six-foot parabolic antennas to two-foot parabolic antennas, you can compensate on the other end by putting up an eight-10-foot dish. He said presenting this as only one option which was a lattice tower is quite disingenuous in his opinion. He said those simply aren't the facts; they are opinions that he doesn't quite understand. He mentioned that when the Wireless Communication Master Plan was adopted it was decided that the City did not want lattice towers within the City and that the existing lattice towers were grandfathered in. He said the overall conclusion was that monopoles are less intrusive structures than lattice towers and that is why the standard has been imposed on anyone wanting to build towers. He said he was interested in an answer to his question on sway versus torque.

**EMANUEL** said he could not answer Mr. Marnell's question and added that they hired a sub-consultant which was a telecommunications firm to do a detailed analysis of the frequencies required, the fade margins over the distances, and the data rate and reliability that was needed and this proposal was that firm's recommendation. He said he believed the antenna size is tied to the frequency they are using. He said he could provide additional information to answer Mr. Marnell's question at a later date, but he could not respond himself.

**MARNELL** asked Mr. Emanuel if he was an electrical engineer?

**EMANUEL** said yes.

**MARNELL** asked so you don't normally design microwave systems?

**EMANUEL** said he manages the design but typically they hire sub-consultants to do the evaluation of the radio paths, antennas, frequencies and fade margins.

**MARNELL** said he will still oppose this as a lattice tower because nothing they have said has changed his mind. He said to make it clear to the people who think this sounds like a lot of technical mumbo jumbo; the antennas are like a focusing device that focuses the beam and sends it out. He said for example if you had a 150-foot tower that swayed 8", the beam would come down. He said this is a case of "if you can dazzle them with facts, baffle them with something else." He said a monopole tower could work fine in this circumstance.

**JOHNSON** said when the consultants ran the technical analysis they came up with a 4-inch allowable deflection to meet the reliability standard they need for this point-to-point system to be able to function successfully. He briefly reviewed various monopole designs and concluded by stating that was the information they received from their tower manufacturers and technical experts in the field.

**MARNELL** commented that they might want to look for a new consulting firm. He said he guaranteed them if they had a 150-foot standard design monopole they can achieve a 99.9% path, which equates to one hour downtime per year, by simply changing the antenna.

**SHERMAN** asked if they considered any other communications systems?

**JOHNSON** said the consultant looked at everything from fiber to cell phone signals.

**EMANUEL** said nine different options were reviewed before it was determined that microwave was the most viable option taking into account the location of the facilities and the data rates that were needed. He said an extensive and exhaustive evaluation of options was conducted.

**SHERMAN** asked if there was a difference in the reliability of the different modes.

**EMANUEL** said they didn't compare reliability, but added that cell phones are not particularly reliable in the well-field area because of coverage. He said fiber optics would be the most preferred system if cost were not a consideration.

**SHERMAN** asked about ISDN.

**EMANUEL** said they do not believe that type of service is available out there. He added that they even looked at satellites as an option.

**DOWNING** asked if this was going to be a single antenna or was it part of a system?

**EMANUEL** said this would be part of system with five sites; one at City Hall, one in Sedgwick County and two in Harvey County.

**DOWNING** asked what type were the other towers that were completed.

**EMANUEL** said lattice with parabolic antennas.

**ROB HARTMAN, PEC, PA, AGENT FOR THE APPLICANT** said they are in agreement with staff comments.

**DOWNING** said although he believes that “what is good for the goose is good for the gander” and that the Commission usually recommends monopoles for most communication towers, he said he thinks they would be remiss if they recommended a different type of tower in a series of 4-5 towers. He said since three to four are already built, he thinks the MAPC should go ahead and recommend that this one be allowed to be lattice as well.

**MARNELL** commented that he may be batting at a few windmills, but sorry; he cannot go along with that. He said the fact that the other towers are lattice means nothing because there are no requirements for compatibility of towers within any communications system.

**MOTION:** To approve subject to staff recommendation.

**DOWNING** moved, **SHERMAN** seconded the motion.

**SUBSTITUTE MOTION:** To approve subject to staff recommendation with the change of the tower from lattice to monopole.

**MARNELL** moved, **MITCHELL** seconded the motion.

**HILLMAN** said as complicated as this has become for those who are not familiar with cell towers; he asked if this item should this be deferred for more information.

**HENTZEN** said he has learned enough about towers. He suggested the Commission vote on the issue and requested that the question be called.

**SUBSTITUTE MOTION FAILED (4-7).**

**DOWNING, FARNEY, FOSTER, HENTZEN, MILLER STEVENS, SHERMAN**  
and **VAN FLEET** – No.

**ORIGINAL MOTION PASSED (8-3).**

**KLAUSMEYER, MARNELL** and **MITCHELL** – No.

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5. **Case No.: ZON2010-04** - Jerry C. Dieckmann (applicant/owner) requests a City zone change from SF-5 Single-Family Residential to NO Neighborhood Office on property described as:

Lot 1, Block B, Westwood Heights 1st Addition to Wichita, Sedgwick County, Kansas, generally located ¼ mile south of 21st Street North, on the southwest corner of Ridge Road and Bittersweet Lane (1935 North Ridge Road).

**BACKGROUND:** The applicant requests NO Neighborhood Office (“NO”), with a Protective Overlay (PO) zoning on the 0.78-acre, SF-5 Single-family Residential (“SF-5”) zoned site; Lot 1, Block B, Westwood Heights 1<sup>st</sup> Addition. Per the applicant’s attached letter, he proposes to build a detached

office/studio and hire more than two employees for an expansion of his current home based internet graphic art business. Home occupation regulations can be found in Unified Zoning Code (UZC) Art IV, Sec IV-E, 5a. The SF-5 zoning district allows a home occupation for a graphic art business, but does not allow a home occupation to be conducted outside of the main dwelling unit, nor does it allow persons not living in the main dwelling unit to be engaged in the home occupation; UZC, Art IV, Sec IV-E, 4a & c. The applicant's letter also proposes hours and days of operation, parking, no signage, building the office/studio to be residential in character, similar to existing detached garage, and not permitting any clients, customers or the general public on the premises. The corner lot's single-family residence (built 1955) has access onto Ridge Road (east side) and Bittersweet Lane (north side).

The zoning of the area is mostly SF-5 zoning, with some TF-3 Two-family Residential ("TF-3") zoning located on the west side of Ridge Road and SF-20 Single-family Residential ("SF-20") zoning along the east side of Ridge. Single-family residential neighborhoods occupy the area along the west side of Ridge. The site is one of a cluster of seven (including the property north of the site and a vacant lot located further south) large SF-5 zoned lots located between 13<sup>th</sup> and 21<sup>st</sup> Streets North that have their single-family residences facing Ridge, with direct access/drives onto Ridge. These residences also appear to be some of the older residences (built 1950s) in the area; the subject site's residence appears to have been built before it was included in the Westwood Heights 1<sup>st</sup> Addition. All other SF-5 and TF-3 zoned lots located along the west side of Ridge are developed with their side or back yards facing Ridge and have no drives onto Ridge. Located on the east side of Ridge, is the large, SF-20 zoned Sedgwick County owned park land, which includes the Sedgwick County Zoo, open space, multiple playing fields, fishing ponds and slough and a bike/pedestrian path. The nearest non-residential zoning from the site, is the LC Limited Commercial ("LC") zoned retail located approximately ¼-mile north at the 21<sup>st</sup> and Ridge intersection, which includes the LC zoned Sedgwick County Extension Office.

**CASE HISTORY:** The site is platted as Lot 1, Block B, Westwood Heights 1<sup>st</sup> Addition, recorded with the Register of Deeds July 12, 1960. In 1990, the site requested a zone change from R-1 Suburban Residential ("R-1") to BB Office District ("BB"); the MAPC recommended denial and the Board of County Commissioners denied the request. The site/area was annexed into the City in between 1991 – 2000. In 2001, the site requested NO zoning, ZON2001-00039. Staff recommended denial, but also offered an alternate recommendation of approval with a PO, if the MAPD considered the request appropriate. The MAPC approved the NO zoning with a PO at their July 19, 2001, meeting. The Wichita City Council (WCC) denied the requested NO zoning with the PO at their August 14, 2001, meeting. At the DAB V's March 1, 2010, meeting, the DAB recommended approval of the requested NO zoning with the proposed PO; see provisions of the PO in the "Recommendation" portion of this report.

**ADJACENT ZONING AND LAND USE:**

NORTH:	SF-5	Single-family residential
SOUTH:	SF-5	Single-family residential
EAST:	SF-20	Sedgwick County Park land
WEST:	SF-5	Single-family residential

**PUBLIC SERVICES:** The site/corner lot is located along Bittersweet Lane and Ridge Road. Ridge is a four-lane arterial street, with a center turn lane. The traffic count for this portion of Ridge, between 13<sup>th</sup> and 21<sup>st</sup> Streets North, is approximately 13,611 – 15,388 cars per day (ADTs). The projected traffic volume for 2030 is 16,790 ADTs. There are no street projects included in the C.I.P. The property has one drive entrance onto Ridge Road and one onto Bittersweet Lane. Bittersweet is a paved residential street, with bar ditches. All utilities are available to the site.

**CONFORMANCE TO PLANS/POLICIES:** The "2030 Wichita Functional Land Use Guide" of the Wichita-Sedgwick County Comprehensive Plan identifies the application area as "Urban Residential." The Urban Residential category reflects the full diversity of residential development densities found in a large urban municipality. The range of housing types found includes single detached homes, semi-detached homes, zero lot line units, patio homes, duplexes, townhouses, apartments and multi-family

units, condominiums, mobile home parks and special residential accommodations for the elderly (assisted living, congregate care and nursing homes). Elementary and middle school facilities, churches, playgrounds, parks and other similar residential-serving uses may be found in this category. The site's current use as a single-family residence and its SF-5 zoning comply with the Urban Residential category.

The Office Locational Guidelines of the Comprehensive Plan recommend that office sites be generally located adjacent to arterial streets. The site's location along Ridge, a four-lane arterial street, with a center turn lane, meets that guideline. The site's residence faces the arterial road, Ridge, which is a less desirable orientation for a single-family residence. Local, service oriented offices should be incorporated within or adjacent to neighborhood and community scale commercial development, and low-density office use can serve as a transitional land use between residential uses and higher intensity uses. The proposed NO zoning does not serve as a transitional zoning/land use between residential uses and higher intensity non-residential uses. The proposed zoning would create an isolated non-residential zoned site, surrounded by SF-5 zoning and single-family residences and the adjacent SF-20 zoned County Parkland. The site's orientation towards Ridge somewhat isolates the site from its residential neighbors, which have no direct access to Ridge and are buffered from Ridge by this large lot.

The UZC would require compatibility setbacks and compatibility height standards between non-residential and residential development, as well as a screening requirement from residential zoning and uses. Conformance with the Landscape Ordinance would also be required for this proposal. The applicant would also need to provide an improved parking area.

**RECOMMENDATION:** The Comprehensive Plan "2030 Wichita Functional Land Use Guide" designates this property as Urban Residential. Single-family residential uses border this site to the north, south and west, and park land is to the east. Introduction of the NO zoning district at this location would permit a wider range of uses that are not in character with adjacent zoning districts and uses. A change in zoning could have a detrimental effect on adjacent residential properties and a change in zoning could trigger requests for more zoning changes along this stretch of Ridge Road, in particular for those six other large residential lots whose residences face the arterial road, Ridge, and have direct access/drives onto Ridge. Therefore, it is recommended that this zone change request be DENIED. But, if in the opinion of the MAPC this zone change request is appropriate for this location, staff recommends approval subject to the following provisions of a Protective Overlay (PO) which would restrict signage, and address landscaping, screening, parking, vehicular access, and require residential character for any building development/redevelopment:

1. Prohibited uses shall include: assisted living, correctional placement residence limited, day care general, hospital, recycling collection station private, animal care limited, automated teller machine, bank or financial institution, bed and breakfast inn, broadcast/recording studio, funeral home, hotel or motel, ancillary parking, wireless communication facility and asphalt or concrete plant limited.
2. The property shall be developed and/or redeveloped with a building that has a residential character, and that includes brick, masonry, wood, Hardie board, composite or a similar type of siding; a double-pitched or hip roof, with a maximum height of 25 feet.
3. Signage shall be that permitted by the home occupation regulations.
4. The property shall be restricted to one point of access onto Ridge Road. The property owner shall dedicate complete access control to Bittersweet Lane. The property owner of the subject site shall provide a joint access and cross lot circulation agreement to be provided prior to the case going to City Council, to be in effect when/if the abutting lot to the south also converts to a non-residential use.
5. Lighting shall conform to lighting standards in Sec. IV-B.4 of the Unified Zoning Code and be

limited to no more than 14 feet in height, including the base. No light poles shall be located within the compatibility setbacks, where the site abuts and is adjacent to residential zoning.

6. Landscaping shall be provided that is equivalent to a landscaped street yard, parking lot landscaping and screening along Ridge Road, and a landscape buffer along the property lines adjoining a residential district, as required in the City of Wichita Landscape Ordinance. A Landscape Plan shall be submitted to the Director of Planning for approval prior to the issuance of a building permit.

This recommendation is based on the following findings:

- (1) The zoning, uses and character of the neighborhood: All property adjoining or adjacent to the application area is zoned SF-5 or SF-20, each of these properties is used as single family residences or as Sedgwick County parkland with open space, multiple playing fields, fishing ponds and slough and a bike/pedestrian path. The application area is part of a larger area that is entirely residential in character. The site is also one of a cluster of seven (including the property north of the site and a vacant lot located further south) large SF-5 zoned lots located between 13<sup>th</sup> and 21<sup>st</sup> Streets North that have their single-family residences facing Ridge, with direct access/drives onto Ridge. All other SF-5 and TF-3 zoned lots located along the west side of Ridge are developed with their side or back yards facing Ridge, with no direct access/drives onto Ridge
- (2) The suitability of the subject property for the uses to which it has been restricted: The property could continue to be used for a single-family residence. Other nearby properties in a similar situation continue to be used for residential purposes. Also, the 0.78-acre lot could potentially be subdivided into more lots through lot splits or a replat. The site's development orientation (residence facing Ridge and having direct access) towards Ridge, a four lane arterial with a turn lane, probably makes it less desirable for single-family residential use.
- (3) Extent to which removal of the restrictions will detrimentally affect nearby property: No similar zoning changes have been approved on this section of Ridge Road, although this is the subject site's third application for an office type of zoning. A change to NO zoning could impact the surrounding residences with a probable increase in traffic and a change in neighborhood character. Approval of this request for NO zoning could encourage the adjacent six, large SF-5 zoned lots/residences to seek a similar approval, as they all have direct access/drives onto Ridge and have their residences facing Ridge.
- (4) Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The "Wichita Functional Land Use Guide" of the *Wichita-Sedgwick County Comprehensive Plan* identifies this site as appropriate for Urban Residential development, which is not in conformance with the application for NO zoning. The proposed rezoning is not in conformance with the Office Locational Guidelines of the plan, in that the site would not serve as a transitional land use from more intense development. The proposed zoning would create an isolated non-residential zoned site, surrounded by SF-5 zoning and single-family residences and the adjacent SF-20 zoned County Parkland. The Guidelines also recommend that office sites be generally located adjacent to arterial streets. The site's location along Ridge, a four-lane arterial street, with a center turn lane, meets that guideline. The site's residence faces the arterial road, Ridge, which is a less desirable orientation for a single-family residence. The site's orientation towards Ridge somewhat isolates the site from its residential neighbors, which have no direct access to Ridge and are buffered from Ridge by this large lot.
- (5) Impact of the proposed development on community facilities: Drainage considerations brought about by redevelopment of the site and a probable increase in traffic onto Ridge.

**BILL LONGNECKER**, Planning Staff presented the Staff Report. He reported that DAB V recommended approval with the Protective Overlay recommended by staff. He commented that although it was not mentioned in the Staff Report, this proposal is considered “spot zoning.”

**MILLER STEVENS** asked for clarification as to where the new structure will be located on the property.

**LONGNECKER** referred to the site plan and indicated an area behind the garage on the west side of the property. He mentioned that the applicant will have to meet screening requirements, if the proposed zone change is approved.

**JERRY DIEKMANN, APPLICANT, 1935 NORTH RIDGE ROAD** said he has been a graphic artist for twenty-six years and that he purchased the property in April, 2009, so the previous requests Mr. Longnecker referred to in his presentation were not made by him. He mentioned that the property was in really bad shape when they bought it. He said four dumpsters of trash have been hauled off the property; and they have completely redone the interior of the residence. He said they are not done making improvements to the property. He said his only goal was to have a home occupation. He said he is a graphic artist that works “on line.” He said he contracts with a number of companies and develops “point-of-purchase” signs. He said he designs the signs, but does not manufacture them. He said he understood that part-time employees were not allowed under the home occupation zoning so that is why he is requesting a zone change. He said he would like to build a studio out back to do his graphic art work. He commented that both of his neighbors already have buildings in back of their homes. He said one of the first things he did was talk to all his neighbors and explained to them what he was proposing. He said he had no strong objections and referred to two letters of support provided as a handout. He commented that he doesn’t want to put up business signs or have customers come to the house, that he does all his business “on line.” He said he didn’t have any problems with the restrictions of the protective overlay with the exception of item #4, concerning dedicating complete access control to Bittersweet Lane and only having access to Ridge Road. He said he likes to enter his property from Bittersweet Lane, because it is a very sharp turn from Ridge into his garage. He said he is also concerned about the additional parking design for employees, because the design he came up with was so that employees could back out and then exit onto Bittersweet Lane.

**HILLMAN** asked why staff was recommending that Bittersweet Lane be closed.

**LONGNECKER** explained that staff was recommending complete access control to Bittersweet Lane to keep whatever traffic that may come to the site on Ridge Road, which was the arterial. He said although the applicant says no one will come to the studio, there are no restrictions on that. He added that a “home occupation” is limited to only the people that live at the residence and; therefore, this needed to be rezoned from SF-5 Single-Family Residential to NO Neighborhood Office. He said if NO is approved, all restrictions under that zoning will apply, in addition to whatever other restrictions this body wants to impose.

**HILLMAN** asked the applicant if he had any plans in the future to set up a paint shop or production facility for the graphics.

**DIEKMANN** said no interest at all. He referenced item #4 and mentioned the cross lot circulation requirement “when/if the abutting lot to the south also converts to a non-residential use.”

**LONGNECKER** said staff is of the opinion that this zone change, if approved, will trigger similar zoning requests to the south and possibly north of this location.

**DEIKMANN** mentioned that the property to the north of him also has access onto Bittersweet Lane.

**CHAIRMAN VAN FLEET** asked the applicant if he had any problems with the rest of the conditions.



**DIEKMANN** said he had no problem with the rest of the conditions.

**FOSTER** asked the applicant to describe in more detail where the structure (graphic studio) would go, and how off street parking would be handled.

**DEIKMANN** said they don't have a plan for off street parking. He said they were going to put a couple of spots by the northwest corner as you pull into the driveway but with the requirement of closing Bittersweet Lane, the turn around to get back out is going to be difficult. He said the building will be located in back of the detached garage. He said he currently has a six-foot fence with brick pillars every 20 feet with lights on top of them around the property that attaches to the side of a detached building. He said the studio will be behind that.

**ERIN SPELTS, 7228 WEST 18<sup>th</sup> STREET NORTH** said they have lived in the neighborhood since 1982. She said they don't have a problem with Mr. Deikmann having a studio, but she said look at the neighborhood. She said people come into the neighborhood on 18<sup>th</sup> Street and go out on Bittersweet Lane. She said their yard backs up to Mr. Deikmann's chain link fence so they can see his swimming pool, garage and his potential office from their backroom. She said she has a 2½ old grandson that can scale that fence and she is concerned about that. She commented that NO Neighborhood Office zoning allows just about everything except for dental and doctor's offices and insurance companies. She asked what happens if Mr. Deikmann sells the property? She said this is a nice, quiet neighborhood and she would like to keep it that way. She asked several questions concerning the application, including, can Mr. Deikmann hire more than two people and how many cars can be parked in the driveway? She also commented that Bittersweet Lane is very narrow and if people are allowed to park on that Lane there could be safety issues. She mentioned coming home one day and that several cars were parked along the Lane. She mentioned that the neighbor to the south has a lawn mower repair business. She said he has made the comment that if Mr. Deikmann gets okayed, he will pay his \$225.00 and get his permit also. She added that she is also concerned about property values going down. She concluded by asking what restrictions are going to be placed on this proposal and how is it going to be monitored?

**FOSTER** asked about the height of the chain link fence.

**SPELTS** replied that the fence was about four-feet high.

**HILLMAN** commented that if this process is approved, the applicant will provide a solid cedar type fence all around the property.

**SPELTS** said her grandson getting into the pool is her biggest fear, but that she was also concerned about what can potentially happen if the rezoning request is granted.

**MICHAEL SPELTS, 7228 WEST 18<sup>th</sup> STREET NORTH** commented that once this is rezoned, the neighbor to the north has mentioned possible rezoning. He said this may turn into commercial properties all the way up to 21<sup>st</sup> Street. He said he does not care about the lawn mower shop or if Mr. Deikmann has a studio, they just don't want this area commercialized.

**GREG FERRIS, AGENT FOR THE APPLICANT** said a solid screening fence around the site is required by Code and will be provided. He said the letter the applicant has offered actually has more restrictions than those recommended in the Staff Report. He said they have no problem with not allowing patients or customers to come to the property if that will make the neighbors feel comfortable. He said in regard to the potential domino effect; this would be a very restricted office use where nothing else can happen. He said those lots will never become commercial properties or offices if the Commission applies the same standards as they are applied to this property. He commented that the cross lot circulation will destroy the residential character and the whole goal was to leave it the way it is.

**CHAIRMAN VAN FLEET** commented that the staff recommendation was to deny the application.

**MOTION:** To deny subject to staff recommendation.

**MITCHELL** moved, **DOWNING** seconded the motion.

**MARNELL** asked how restrictive can the Commission be with a protective overlay on a zoning case like this?

**JOE LANG, CHIEF DEPUTY CITY ATTORNEY** said some of the conditions the applicant has offered would be more appropriate for a conditional use. He said the Commission may require any restriction that is considered reasonable and that has been imposed on other properties.

**MARNELL** said it appeared to him that the neighbors didn't have a problem with what the applicant wanted to do per se, but they did not want it to be classified just NO because of possible higher uses in the future. He said he didn't know how to make the restrictions tight enough to satisfy the neighbors yet still allow the applicant to do what he wanted to do, which he thought seemed reasonable.

**LANG** commented that the code referenced "any other specific development standards." He said as long as the restriction pertained to the use of the property that would be appropriate to the protective overlay.

**MARNELL** asked if the Commission could restrict the use to that particular type of business (graphic design) and require that no customers be at the site?

**LANG** said the "no customers" requirement was a gray area.

**HILLMAN** asked about off street parking on Bittersweet Lane. He asked if the business could be asked to provide additional parking?

**LANG** said yes additional parking could be required as part of the protective overlay.

**SHERMAN** asked if this is approved, what about the lawn mower guy to the south. Would he have to pick up and deliver the lawn mowers if no customers were allowed at the site.

**LONGNECKER** explained that a lawn mower repair service was not allowed in NO zoning. He said that type of business required LC Limited Commercial zoning which staff would not support at that location which was further away from the corner of 21<sup>st</sup> Street.

**HENTZEN** asked if it was proper to use a conditional use without changing the zoning.

**LANG** responded that conditional uses are not options for changing SF-5 Single-Family Residential zoning.

**FOSTER** asked if this were a home occupation, if there was a structure connecting the principle structure with the studio structure, would that have to be an enclosed structure?

**LONGNECKER** responded yes and it would also have to meet occupancy standards.

**FOSTER** asked if there was any flexibility under the home occupation for two employees?

**MILLER** said the only other option was the applicant could have applied for TF-3 Two-Family Residential zoning which allows outside employees, but he would still have the home occupation restrictions with regard to parking and changes to the façade of the home. He said that is why staff directed the applicant to apply for a zone change. He said five questions need to be answered for a

variance and one of them is proving that the issue is due to a hardship not of your own making and staff had a hard time proving that this was not a self-imposed hardship

**MARNELL** said this seems like “no harm, no fowl” if it is done properly. He said the neighbors are not opposed to what the applicant is proposing, only what can happen in the future. He said he believes the Commission can zone this NO and make the protective overlay tight enough to accommodate what the applicant is doing only with a bigger facility with appropriate screening, a parking and landscape plan that is acceptable to the Planning Department, and solid fencing.

**SUBSTITUTE MOTION:** To approve NO zoning with a PO to include appropriate screen, a parking and landscape plan and limit the number of employees to four.

**MARNELL** moved, **HILLMAN** seconded the motion.

**CHAIRMAN VAN FLEET** clarified that the motion included the additional offers contained in the applicant’s letter.

**MARNELL** said as long as it is not in conflict with Staff’s recommendation.

**LONGNECKER** said staff recommended signage and the applicant offered no signage.

**MARNELL** said no signage.

**MILLER** commented that NO does not require solid fencing; however, there is an option for landscaping.

**MARNELL** specifically requested solid fencing.

**FARNEY** asked about access to Bittersweet Lane?

**MARNELL** said to leave it as staff recommended. He said as a side comment, personally he would rather have access onto Bittersweet Lane than Ridge Road because he thinks the problem with arterials is there is way too much access onto them.

**MILLER STEVENS** said she would be in opposition to the substitute motion. She said once the zoning is changed, folks come and go but the zoning stays with the land and once zoning is changed it is difficult to go back. She said this is an established neighborhood and although the neighbors don’t mind the home occupation, they don’t want any kind of commercial development and she feels approving this would be stepping down the road in that direction.

**FOSTER** commented that because of the swimming pool, the minimum fence height is five feet and the motion maker might want to mention that. He asked what was Staff’s opinion was about access onto Bittersweet Lane.

**LONGNECKER** said they prefer the recommendation in the PO which was to limit access to Ridge Road.

**MITCHELL** said with all due respect, staff did not include in the Staff Report that this was considered spot zoning and said that this is a classical example of what can happen with spot zoning. He said the property has gone before several hearings and been denied for the very reasons that have been discussed today. He said if this is approved, he guarantees within two to three years there will be half a dozen more zone changes in the area. He said he would not support the substitute motion.

**SUBSTITUTE MOTION FAILED (3-8).**

**DOWNING, FARNEY, FOSTER, HENTZEN, KLAUSMEYER, MILLER  
STEVENS, MITCHELL, SHERMAN - No.**

**ORIGINAL MOTION CARRIED (8-3).  
HILLMAN, MARNELL, VAN FLEET - No**

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6. **Case No.: ZON2010-05 and CON2010-09** - Biehler Properties, LLC c/o James Biehler (owner); Baughman Company, PA c/o Russ Ewy (agent) requests a City zone change from GC General Commercial to LI Limited Industrial and City Conditional Use to permit wrecking and salvage.

Lot 1, Slaughter Addition, Wichita, Kansas, EXCEPT the South 225 feet thereof; TOGETHER WITH Lot 1, Wilson and Brown Second Addition, Wichita, Sedgwick County, Kansas, EXCEPT the South 225 feet thereof, generally located north of MacArthur Road, 3,000 feet east of Broadway Street (1100 East MacArthur Road).

**BACKGROUND:** This is a request for a zone change from GC General Commercial (“GC”) to LI Limited Industrial (“LI”) and a Conditional Use for Wrecking/Salvage Yard. The three-acre site is located north of MacArthur Road about two-third mile east of Broadway and one-fifth mile east of the I-135 overpass. The property adjoins the Arkansas River to the north. Currently the application area is part of a larger site used as a contractors office and storage yard, which is a permitted use in the GC zoning district. The applicant would like to add Wrecking/Salvage on the north half of the site, which requires LI zoning and a Conditional Use.

Wrecking/Salvage Yard is a Conditional Use allowed in the LI subject to the Unified Zoning Code (“UZC”) supplementary use regulations of Article III, Section III-D.6.e., including:

(1) it cannot be abutting an arterial street, expressway or freeway, (2) in the opinion of the Planning Commission, will not adversely affect the character of the neighborhood, and (3) is enclosed by a fence or wall not less than eight feet in height and having cracks and openings in excess of five percent of the area of such fence (or wall).

The site plan shows the Conditional Use as occupying the northern part of a tract currently owned and operated as a landscape contractor’s office and storage yard. The south 220 feet abutting MacArthur Road would remain zoned GC and continue in this use.

A nonconforming salvage yard located on property zoned GC abuts the east property line of the application area. This site is operated as Auto Recyclers of Kansas and it is staff understanding that if this request is approved, Auto Recyclers of Kansas will expand some of their operations to the subject site. Auto Recyclers of Kansas present nonconforming site was not included in the application for the zone change and conditional use, leaving part of the business nonconforming. Further to the east, there is a restaurant zoned GC and a manufactured home park zoned MH Manufactured Housing (“MH”). To the west is a self-service warehouse zoned GC, bordered by a vehicle storage yard, also zoned GC. Two single-family residences on property zoned SF-5 Single-Family Residential (“SF-5”) are located directly south of the site along MacArthur Road, and another residence is on property zoned GC. An open field zoned GC appears to be overflow storage for the contractor business. A new senior apartment project is under construction on property zoned LC Limited Commercial (“LC”) to the southeast of the intersection of MacArthur Road with Laura Street, and another manufactured home park on property zoned LC and MH is located south and southeast of MacArthur Road. The Arkansas River is located directly north of the site, including the Wichita-Valley Center Riverside Levee.

**CASE HISTORY:** The property is platted as Slaughter Addition, recorded April 21, 1969, and Wilson and Brown Second Addition, recorded September 16, 1966.

**ADJACENT ZONING AND LAND USE:**

NORTH:	Unzoned, SF-5	Arkansas River, I-135, single-family residential
SOUTH:	SF-5, LC, MH, GC	Single-family residential, manufactured home park, apartments, open storage
EAST:	GC, MH	Salvage yard, restaurant, manufactured home park
WEST:	GC	Mini-storage warehouse, vehicle storage yard, I-135

**PUBLIC SERVICES:** The application area is part of a site that has access to MacArthur Road, a principal arterial street that is four lanes with a raised median and a center turn lane between Broadway and Hydraulic. I-135 crosses over MacArthur but has no access to it. Traffic volumes at MacArthur and Broadway were approximately 12,000 AADT (annual average daily traffic) in 2007.

**CONFORMANCE TO PLANS/POLICIES:** The *2030 Wichita Functional Land Use Guide* of the Comprehensive Plan classifies the general location as appropriate for “local commercial” development. Wrecking/salvage yards are an inappropriate use for this classification. However, there is an existing nonconforming salvage operation located to the east; in such circumstances the MAPC has often viewed similar requests as an expansion of an existing use, and allowed the request despite the map designation.

The Industrial Locational Guidelines of the Comprehensive Plan recommend that industrial uses should be located in close proximity to support services and provide good access to major arterials, truck routes, belt highways, utility trunk lines, along railroads, near airports and as extensions of existing industrial uses; the site has access to an arterial and the other uses north of MacArthur are more intensive than normally associated with local commercial designation. Industrial uses should be located away from existing or planned residential areas, and sited so as not to generate travel through less intensive land uses. The proposed site is located across from three isolated residences (one is on commercial zoning), and near some manufactured home parks. The application area is located near the new senior apartments under construction to the southeast but the apartments are being constructed on LC zoned land and they are located farther from this site than the existing nonconforming salvage operation.

**RECOMMENDATION:** Based upon this information available prior to the public hearings, planning staff recommends that the request be APPROVED subject to the following conditions:

1. The Conditional Use shall permit the dismantling, storage and shipping of motor vehicles, appliances and other industrial scrap materials.
2. The site shall be developed and operated in compliance with all of the conditions of UZC, Art III, Sec. III-D.6.e, including the use of approved fencing or wall materials, and the approved site plan. The site plan shall be revised to provide screening on all sides. The site plan shall be revised to include setbacks, utility easements and demonstrate how the site will be accessed.
3. Employee parking spaces shall be provided per the UZC on an area paved with asphalt or concrete.
4. Stored materials, containers or bales shall be stored on a surface approved by the Office of Central Inspection.
5. A revised site plan addressing the conditions of approval shall be approved by the Planning Director prior to the beginning of the operation.
6. No scrap vehicles or scrap metal/appliances waiting to be processed shall be visible from ground-level view from any public right-of-way or abutting properties.
7. Storage of all of scrap materials (vehicles, metals, appliances, etc., including bales of the just mentioned) waiting to be processed and the containers they are stored in shall be organized and installed in an orderly manner, including an exposed perimeter, as specified by Environmental

Services to prevent rodent harborage and breeding.

8. The applicant shall maintain at all times an active program for the eradication and control of rodents.
9. Weeds shall be controlled within the subject property and adjacent to and along the outside perimeter of the screening fence.
10. Any locking devices on entrance gates shall meet Fire Department requirements. Access to and within the site shall be provided by fire lanes per the direction and approval of the Fire Department.
11. Access to the subject property shall be provided for on-going inspections of the site for groundwater and soil contaminants by Environmental Services and other applicable governmental agencies. If the inspections determine it to be necessary, the applicant shall be required to install monitoring wells and/or perform soil testing on the property to monitor the quality of groundwater and/or soil, and shall pay the cost of an annual groundwater and/or soil test for contaminants as designated by the Environmental Services.
12. Notification shall be given to Environmental Services of any on-site storage of fuels, oils, chemicals, or hazardous wastes or materials. A disposal plan for fuels, oils, chemicals, or hazardous wastes or materials shall be placed on file with Environmental Services. All manifests for the disposal of fuels, oils, chemicals, or hazardous wastes or materials must be kept on file at the site and available for review by the Environmental Services.
13. The applicant shall implement a drainage plan approved the City Engineer prior to the commencement of operations that minimizes non-point source contamination of surface and ground water.
14. The applicant shall obtain and maintain all applicable local, state, and federal permits necessary for the operation of the storage of scrap metal waiting to be processed and storage of the scrap metal bales.
15. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

The staff's recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The site plan shows the Conditional Use as occupying the northern part of a tract currently owned and operated as a landscape contractor's office and storage yard. The south 220 feet abutting MacArthur Road would remain zoned GC and continue in this use. A nonconforming salvage yard located on property zoned GC abuts the east property line of the application area. Further to the east, there is a restaurant zoned GC and a manufactured home park zoned MH Manufactured Housing ("MH"). To the west is a self-service warehouse zoned GC, bordered by vehicle storage yard, also zoned GC. Two single-family residences on property zoned SF-5 Single-Family Residential ("SF-5") are located directly south of the site along MacArthur Road, and another residence is on property zoned GC. An open field zoned GC appears to be overflow storage for the contractor business. A new senior apartment project is under construction on property zoned LC Limited Commercial ("LC") located to the southeast of the intersection of MacArthur Road with Laura Street, and another manufactured home park on property zoned LC and MH is located south and southeast of MacArthur Road. The Arkansas River is located directly north of the site, including the Wichita-Valley Center Riverside Levee.

2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned GC and could continue to be used with this zoning, similar to the other GC-type uses along MacArthur.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Detrimental effects on nearby property are lessened by the recommended conditions of approval, which include screening and monitoring of environmental impacts. These are particularly important due to the proximity of the site to the river. The presence of the existing nonconforming salvage operation on the east means that it is not introducing a new use to the area.
4. Conformance of the requested change to adopted or recognized Plans/Policies: The *2030 Wichita Functional Land Use Guide* of the Comprehensive Plan classifies the general location as appropriate for “local commercial” development. Wrecking/salvage yards are an inappropriate use for this classification. However, there is an existing nonconforming salvage operation to the east, which, has in the past been viewed as an expansion of an existing use, and allowed despite the map designation. The Industrial Locational Guidelines of the Comprehensive Plan recommend that industrial uses should be located in close proximity to support services and provide good access to major arterials, truck routes, belt highways, utility trunk lines, along railroads, near airports and as extensions of existing industrial uses; the site has access to an arterial and the other uses north of MacArthur are more intensive than normally associated with local commercial designation. Industrial uses should be located away from existing or planned residential areas, and sited so as not to generate travel through less intensive land uses. The proposed site is located across from three isolated residences (one is on commercial zoning), and near some manufactured home parks. It is near the new senior apartments under construction to the southeast but the apartments are being constructed on LC zoned land and they are located farther from this site than the existing nonconforming salvage operation.
5. Impact of the proposed development on community facilities: All utilities are available to the site. The use of this property should have limited impact on community facilities.

**DONNA GOLTRY**, Planning Staff presented the Staff Report. She reported that DAB III recommended approval subject to conditions as stated in the Staff Report. She referred to the letter of opposition received from the neighbor to the south with pictures. She commented that the neighbor wanted a better fence.

**MITCHELL** requested clarification of condition #1.

**GOLTRY** commented that condition #1 originally had an expanded list of activities, including crushing, baling, etc. but the activities were limited to as stated in the staff report at the DAB meeting.

**MITCHELL** asked if the agent accepted that?

**GOLTRY** said yes, but that she thought the agent would like to clarify.

**RUSS EWY, BAUGHMAN COMPANY, PA, AGENT FOR THE APPLICANT** apologized for pulling this item off the Consent Agenda. He said they are in agreement with staff comments he simply misread the Staff Report. He explained that there was an expanded list of uses that fall under a wrecking/salvage operation, but, he said this particular operation takes in cars that have been totaled and removes parts such as transmissions, upholstery, etc. and leaves the shell which will eventually be moved off the property when all the parts are used.

**HILLMAN** asked if the applicant was interested in fixing and repairing his fence.

**EWY** said that is correct. He said there is new fencing along the front of the operation. He commented that the property owner Mr. Beihler contacted Ms. Martin the day after her letter was received and addressed her concerns.

**HILLMAN** clarified not just meet Ms. Martin's concern's but City guidelines that vehicles will not be visible as well.

**FOSTER** asked about the existing fence encroachment into floodway right-of-way.

**GOLTRY** said the applicant will have to come into compliance with all requirements. She said if it is in violation it will need to be moved. She said they still have to comply with all other regulatory bodies such as floodway, waste materials, etc.

**MOTION:** To approve subject to staff recommendation.

**MARNELL** moved, **HENTZEN** seconded the motion, and it carried (10-1).

**HILLMAN** – No.

7. **Case No.: CON2010-06** - Wayne and Dorothy Hall, City of Wichita Water Utility (applicants) / Professional Engineering Consultants, P.A. (Rob Hartman) request County Conditional Use for a major utility, well control building, in RR Rural Residential zoning on property described as:

The West 466.7 feet of the South 466.7 feet of the Southwest Quarter of Section 6, Township 25 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas, generally located on the northeast corner of 119th Street West and 117th Street North.

**BACKGROUND:** The application area is 3.64 acres located at the northeast corner of the intersection of West 117<sup>th</sup> Street North and North 119<sup>th</sup> Street West (11628 West 117<sup>th</sup> Street North). The property is zoned RR Rural Residential ("RR"), and is the location of an existing City of Wichita Water Utility facility that provides water to the utility. The existing buildings will be removed and a new recharge recovery well building, antenna tower, water holding tank, transformer gravel drive and parking area will be installed. These core improvements will be enclosed by a fence that is smaller than the total application area. Thirty-foot building setbacks are show along 119<sup>th</sup> Street West and 117<sup>th</sup> Street North. A 20-foot building setback and a 25-foot building setback are shown along the north and east property lines, respectively. Half-street dedications, varying in width from 60 feet to 75 feet, are shown along both section-line roads. One point of access to the site is shown off of 119<sup>th</sup> Street. Complete access control is proposed for 117<sup>th</sup> Street.

The antenna tower is to be approximately 20 feet tall, and be located approximately 88 feet from the 119<sup>th</sup> Street right-of-way, 136 feet from the northern and eastern property lines and 144 feet from the 117<sup>th</sup> Street right-of-way.

Surrounding property is either used for agriculture or is a farmstead or large-lot residence. All surrounding property is zoned RR.

**CASE HISTORY:** None

**ADJACENT ZONING AND LAND USE:**

NORTH: RR Rural Residential; agriculture  
SOUTH: RR Rural Residential; agriculture  
EAST: RR Rural Residential; residence and agriculture  
WEST: RR Rural Residential; residence and agriculture



**PUBLIC SERVICES:** The facility does not require publicly supplied sanitary sewer or water, beyond what the facility will provide as part of the project. Neither section line roads are paved; however, there will be little traffic generated by the site once it is in operation. The applicant's site plan depicts 60 feet of half-street right-of-way widen to 75 feet at the intersection.

**CONFORMANCE TO PLANS/POLICIES:** The property is shown on the Wichita and Small Cities 2030 Urban Growth Areas map as being "rural." Rural areas are located outside the 2030 urban growth area for Wichita and the small cities. This category is intended to accommodate agricultural uses, rural based uses that are no more offensive than those agricultural uses commonly found in Sedgwick County.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to platting within 1-year.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: All surrounding property is zoned RR Rural Residential and is used for farming, large-lot residential or water utility.
2. The suitability of the subject property for the uses to which it has been restricted: The site currently has an existing well and pumping facilities. This project would replace those older facilities with newer ones and continue similar operations.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed request will have no more impact on nearby properties than the existing facilities.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Approval should improve and enhance the utility's ability to supply water to its customers. Denial would presumably negatively impact the utility's ability to obtain, store and deliver water to its customers by forcing them to use older less efficient equipment.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The property is shown on the Wichita and Small Cities 2030 Urban Growth Areas map as being "rural." Rural areas are located outside the 2030 urban growth area for Wichita and the small cities. This category is intended to accommodate agricultural uses, rural based uses that are no more offensive than those agricultural uses commonly found in Sedgwick County. The request is in conformance with adopted plans as the facilities are needed where the resource exists.
6. Impact of the proposed development on community facilities: Improve the delivery of water.

**DALE MILLER**, Planning Staff presented the Staff Report.

**MOTION:** To approve subject to staff recommendation.

**MARNELL** moved, **KLAUSMEYER** seconded the motion, and it carried (11-0).

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8. **Case No.: CON2010-07** - R&R Realty, LLC (Owner/Applicant) Baughman Company, Russ Ewy (Agent) Request City Conditional Use to permit a neighborhood swimming pool on property described as;

Lot 1, Block A, Northgate Addition to Wichita, Sedgwick County, Kansas, generally located Midway between 53rd Street North and 61st Street North, west of N. Meridian Avenue (2602 58th Court North).

**BACKGROUND:** The applicant is requesting consideration for a Conditional Use to permit a 20-foot (x) 40-foot “neighborhood swimming pool” on the undeveloped SF-5 Single-family Residential (“SF-5”) zoned Lot 1, Block A, Northgate Addition. The Unified Zoning Code (“UZC”) defines a neighborhood swimming pool as a non-publicly owned swimming pool that is not located on the same lot as a residential dwelling unit but that is intended as an amenity for use by the residents and their guests of that subdivision or by a group of subdivisions in the immediate vicinity. Neighborhood swimming pools can be a “use-by-right” if they are identified in the platting of a reserve and a site plan is submitted for review and approval at the time of platting. In this case, a reserve containing a neighborhood pool was not identified on the plat. The UZC requires a Conditional Use for a neighborhood pool in the SF-5 zoning district.

The hours of operations and maintenance of the pool will be determined by the homeowner’s association. The code requires landscape street yards and buffer landscaping per Section IV-B.3 of the UZC and outdoor lighting that employs cut-off luminaries and mounting standards that are not higher than one-half the distance to SF-5 zoned property (Section IV-B.4). Because the UZC classifies a neighborhood pool as a “residential use,” compatibility setbacks will not apply. The lot has platted setbacks, with the UZC’s setbacks for the SF-5 zoning district applying on the lot’s northeast side (a 6-foot interior side yard setback). As shown on the site plan, the 20-foot by 40-foot swimming pool does not appear to encroach into any setbacks. The applicant does not show a club house; if there is not a clubhouse the eight parking spaces (including one ADA compatible space) shown on the site plan meet the minimum requirements of the UZC (Section IV-B.1). The site plan also does not show any lighting or trash receptacles.

The site is part of the SF-5 zoned Northgate single-family subdivision. Most of the area around the site is undeveloped single-family lots, except for some housing developed north of the subject site and a detention pond to the southeast. All property to the north, south, east and west of the subject site is platted, zoned SF-5.

**CASE HISTORY:** The subject site is described as Lot 1, Block A, Northgate Addition, Wichita, Sedgwick County, Kansas, and was recorded on November 1, 2006. The subject site is currently undeveloped.

**ADJACENT ZONING AND LAND USE:**

NORTH:	SF-5	Vacant Residential Land
EAST:	SF-5	Vacant Residential Land
SOUTH:	SF-5	Vacant Residential Land
WEST:	SF-5	Vacant Residential Land

**PUBLIC SERVICES:** All utilities are available to the subject site. The subdivision is accessed off of North Meridian Avenue, a paved, four lane principal arterial, with no traffic counts at this location. 58<sup>th</sup> Street North and 58<sup>th</sup> Court North, which directly accesses the site, are both paved residential streets.

**CONFORMANCE TO PLANS/POLICIES:** The Comprehensive Plan identifies this property as Urban Development Mix within the Wichita 2030 Urban Growth Area. The urban development mix category encompasses areas of land that will likely be developed or redeveloped within the next 30 years with uses predominately found in the Urban Residential Use category. However, there is a strong likelihood that concentrations and pockets of Major Institutional Uses, Local Commercial Uses and Park and Open Space Uses will ultimately be developed within this area as well, based upon market driven location factors. In certain areas there is the possibility that future uses may include Regional Commercial and Employment/Industry Center. The Wichita 2030 Urban Growth Area identifies Wichita’s urban fringe area that is presently undeveloped but has the potential to be developed by 2030, based upon Wichita

population growth projections and current market trends. This is the area in which City limits expansion and extension of municipal services and infrastructure should be focused during the period from 2005 to 2030. Determination of growth direction and amount is based upon municipal political considerations, anticipated municipal population growth, efficient patterns of municipal growth, current infrastructure limitations, cost effective delivery of future municipal services and environmental factors. The subject site is part of a developing SF-5 zoned single-family residential subdivision that is located within a larger area of SF-5 and SF-20 zoned lands. The UZC classifies the proposed neighborhood swimming pool as a residential use, which can be considered as a Conditional Use in the SF-5 zoning district.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

1. The site shall be developed in general conformance with the approved site plan.
2. The subject property shall be developed in accordance with the regulations of the Landscape Ordinance per a landscape plan approved by the Planning Director prior to the issuance of a building permit.
3. Screening in accordance with Section IV-B.3 of the Unified Zoning Code shall be provided along the north property line.
4. Development and use of the subject property for a neighborhood swimming pool shall be in accordance with all applicable federal, state, and local rules and regulations, including building and construction codes, health codes, and operational standards.
5. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the surrounding area: The site is part of the SF-5 zoned Northgate single-family subdivision. Most of the area around the site is undeveloped single-family lots, except for some housing located north of the subject site and a detention pond to the southeast. All property to the north, south, east and west of the subject site is platted, land zoned SF-5.
2. The suitability of the subject property for the uses to which it has been restricted: The site could be developed as currently zoned, which would be a single-family residence on a typical sized lot for this subdivision. By code the pool is limited to use by residents of the neighborhood and their guests, which limits the pool's intensity of use.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval will introduce a use that is not currently permitted by right. Traffic during the summer may increase when compared to a single-family residence, however landscaping and buffering may mitigate detrimental effects. If the pool is allowed to remain open into the late evening or night, pool operations may be detrimental to nearby residences since sound seems to carry further in the evening and nighttime.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: The neighborhood pool is intended to be an amenity to this new neighborhood and could be used by the applicant to help sell lots in this developing subdivision.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Comprehensive Plan identifies this property as Urban Development Mix within the Wichita 2030 Urban Growth Area. The urban development mix category encompasses areas of

land that will likely be developed or redeveloped within the next 30 years with uses predominately found in the Urban Residential Use category. However, there is a strong likelihood that concentrations and pockets of Major Institutional Uses, Local Commercial Uses and Park and Open Space Uses will ultimately be developed within this area as well, based upon market driven location factors. In certain areas there is the possibility that future uses may include Regional Commercial and Employment/Industry Center. The Wichita 2030 Urban Growth Area is a category that identifies Wichita's urban fringe that is presently undeveloped but has the potential to be developed by 2030, based upon Wichita population growth projections and current market trends. This is the area in which City limits expansion and extension of municipal services and infrastructure should be focused during the period from 2005 to 2030.

Determination of growth direction and amount is based upon municipal political considerations, anticipated municipal population growth, efficient patterns of municipal growth, current infrastructure limitations, cost effective delivery of future municipal services and environmental factors. The subject site is part of a developing SF-5 zoned single-family residential subdivision, that is located within a larger area of SF-5 and SF-20 zoned lands. The UZC classifies the proposed neighborhood swimming pool as a residential use, which can be considered as a Conditional Use in the SF-5 zoning district.

6. Impact of the proposed development on community facilities: Trips to this site would likely increase in the summer if the pool is approved when compared to a single-family residence. Use of the facility will be limited to neighborhood residents and their guests, thereby minimizing traffic volume and demand for other services such as police, EMS or code enforcement. Adequate community facilities and services are in place to meet expected demands.

**DERRICK SLCOUM**, Planning Staff presented the Staff Report.

**MOTION:** To approve subject to staff recommendation.

**MARNELL** moved, **KLAUSMEYER** seconded the motion, and it carried (11-0).

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9. **Case No.: CON2010-08** - Cargill Meat Solutions Corporation (property owner), Midwest Scrap Management, Inc. (prospective purchaser) / Robert Kaplan (agent) requests a City Conditional Use to permit wrecking and salvage on property described as:

Lot 1 except beginning at the Northwest corner of Lot 1; thence East 213.12 feet; thence South 340 feet; thence West 213.12 feet; thence North 340 feet to beginning, Block 1, North Industrial Park Addition to Sedgwick County, Kansas.

AND

Beginning at the Northwest corner of Lot 1; thence East 213.12 feet; thence South 340 feet; West 213.12 feet; thence North 340 feet to beginning, Block 1, North Industrial Park Addition to Sedgwick County, Kansas. Generally located at the southwest corner of 29th Street North and North Mead Avenue (2901 N. Mead).

**BACKGROUND:** The application area is located at the southwest corner of north 29<sup>th</sup> Street and Meade Street, and is zoned GI General Industrial ("GI"). The applicant is seeking a Conditional Use to permit "wrecking and salvage" on the 25.68-acre site that is developed with an office building that currently houses Cargill Meat Solutions. The current owner intends to sell the property to Midwest Scrap Management, Inc., who intends to operate a metal and scrap salvaging, sorting and shredding operation. Material will be brought in primarily by truck; however processed material is primarily shipped out by rail. Trucks will be used for local delivery. It is estimated that incoming truck trips will be fewer than 20 on an average day and up to 30 on a busier day. Scrap piles may reach 30 feet in height. The applicant's do not part-out vehicles. Inoperable vehicles located on-site will be shredded. Shredded material ends up

in “fist-sized” pieces. The application area has one access point each to 29<sup>th</sup> Street and to Meade. The business expects to employ up to 50 office workers, truck drivers and heavy equipment operators.

The *Wichita-Sedgwick County Unified Zoning Code*, Sec. II-B.14.r defines “wrecking/salvage yard as a lot used for the collecting, dismantling, storing, and/or salvaging of machinery, equipment, appliances, inoperable vehicles, vehicle parts, bulky waste, salvage material, junk or discarded materials; and/or for the sale of parts thereof. A wrecking and salvage yard is allowed by Conditional Use permit in the LI Limited Industrial (“LI”) and GI districts, and allowed by right in the Air Force Base (“AFB”) District, subject to Supplementary Use Regulations Sec. III-D.6.e (1) the use is not abutting an arterial street, expressway or freeway; (2) in the opinion of the Planning Commission, the use will not adversely affect the character of the neighborhood; and (3) is enclosed by a fence or wall not less than eight feet in height and having cracks and openings in excess of five percent the area of such fence. With respect to the requirement that the use not abut an arterial street, planning staff has been advised by the Office Central Inspection that as long as the use is located at least 150’ from arterial street right-of-way it is considered to not be abutting. The existing chain-link fence depicted on the submitted site plan does not meet the opacity requirement mention above. The screening wall needs to also meet the standards outlined in Sec. IV-B.3.h: screening walls and fences shall be constructed of standard building materials customarily used for wall and fence construction such as brick, stone, concrete masonry, stucco, concrete or wood. In the past, staff has received complaints regarding the use of large rectangular concrete blocks as screening material. It is recommended that such fencing material be prohibited from meeting the screening requirement.

Surrounding property is all zoned GI, and is used for a variety of industrial uses including warehousing, steel fabricating, grain elevators, outside storage of trailers, offices and manufacturing, and salvage and wrecking. Glickman Metal Recycling is located just east of the application area, and contains significant piles of scrap metal.

**CASE HISTORY:** The site appears to have been zoned heavy industrial in 1958, and was platted as the North Industrial Park Addition in June 1972.

**ADJACENT ZONING AND LAND USE:**

NORTH:	GI	General Industrial; elevator, manufacturing
SOUTH:	GI	General Industrial; grain elevator
EAST:	GI	General Industrial; outside storage of semi-truck trailers and mobile home-type trailers, warehousing
WEST:	GI	General Industrial; outside metal recycling; steel fabricating

**PUBLIC SERVICES:** 29<sup>th</sup> Street is a paved four-lane arterial with approximately 50 feet of half-street right-of-way. Meade is a paved two-lane street with 35 feet of half-street right-of-way.

**CONFORMANCE TO PLANS/POLICIES:** The 2030 Wichita Functional Land Use Guide depicts this site as being appropriate for “employment / industry center.” Employment / industry centers encompass areas with uses that constitute center or concentrations of employment of an industrial, manufacturing, service or non-institutional nature. The range of uses includes manufacturing and fabrication facilities, warehousing and shipping centers, call centers and corporate offices. The GI zoning district is the most intense zoning district contained in Wichita-Sedgwick County Unified Zoning Code (“UZC”), except for the Air Force Base (“AFB”) district.

The application area is still subject to the amended November 27, 1972, General Urban Renewal Plan. The General Land Use Plan map of that document depicts this site as appropriate for “heavy manufacturing” that is a category of industries which are apt to have an extensive impact on the surrounding area. Included are heavy assembly and fabrication uses which may create considerable traffic volume, noise, dust, odor, blast and smoke. Floor area to lot area ratio shall not exceed 3.00 with

maximum lot coverage limited to a maximum of 50 percent. As currently developed the site complies with these development standards.

The January 4, 2005, 21<sup>st</sup> Street North Corridor Revitalization Plan's Preferred 20+ Land Use Plan depicts the site as appropriate for "general industrial" uses, that acknowledges the importance of heavy industry in the Wichita region and specifically the importance of rail dependent uses in the plan area. Rail dependent and heavy industrial uses are allowed in this category. Light industrial uses are also allowed.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

1. The Conditional Use shall permit the torch cutting, crushing, shearing, baling, shredding, storage and shipping of motor vehicles, appliances and other industrial scrap materials. Recycling, salvage or wrecking activity is not permitted within 150 feet of 29<sup>th</sup> Street's southern right-of-way.
2. Screening walls shall comply with Sec. IV-B.3.h, except that the use of the large rectangular concrete blocks as fencing material is prohibited.
3. The site shall be developed and operated in compliance with all of the conditions of UZC, Art III, Sec. III-D.6.e, including the use of approved fencing or wall materials, and the approved site plan. Material used for the screening wall shall be identified on the approved site plan.
4. Employee parking spaces shall be provided per the UZC on an area paved with asphalt or concrete.
5. Stored materials, containers or bales shall be stored on a surface approved by the Office of Central Inspection.
6. A revised site plan addressing the conditions of approval shall be approved by the Planning Director prior to the beginning of the operation.
7. Storage of all scrap materials (vehicles, metals, appliances, etc., including baled material ) waiting to be processed and the containers they are stored in shall be organized and be maintained in an orderly manner, including an exposed perimeter, as specified by Environmental Services to prevent rodent harborage and breeding.
8. The applicant shall maintain at all times an active program for the eradication and control of rodents.
9. Weeds shall be controlled within the subject property and adjacent to and along the outside perimeter of the screening fence.
10. Any locking devices on entrance gates shall meet Fire Department requirements. Access to and within the site shall be provided by fire lanes per the direction and approval of the Fire Department.
11. Access to the subject property shall be provided for on-going inspections of the site for groundwater and soil contaminants by Environmental Services and other applicable governmental agencies. If the inspections determine it to be necessary, the applicant shall be required to install monitoring wells and/or perform soil testing on the property to monitor the quality of groundwater and/or soil, and shall pay the cost of an annual groundwater and/or soil test for contaminants as designated by the Environmental Services.

12. Notification shall be given to Environmental Services of any on-site storage of fuels, oils, chemicals, or hazardous wastes or materials. A disposal plan for fuels, oils, chemicals, or hazardous wastes or materials shall be placed on file with Environmental Services. All manifests for the disposal of fuels, oils, chemicals, or hazardous wastes or materials must be kept on file at the site and available for review by the Environmental Services.
13. The applicant shall implement a drainage plan approved by the City Engineer prior to the commencement of operations that minimizes non-point source contamination of surface and ground water.
14. The applicant shall obtain and maintain all applicable local, state, and federal permits necessary for the operation of the storage of scrap metal waiting to be processed and storage of the scrap metal bales.
15. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: All surrounding property is zoned GI General Industrial, and is used for industrial activities ranging from outside storage of trailers, warehousing, manufacturing, steel fabricating or wrecking and salvage. The wrecking and salvage operation has extensive piles of scrap.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned GI General Industrial which permits a very wide range of commercial, office and industrial uses. The site is developed with an office building and has some room for additional building. The site could be used as currently zoned; however, there has been increasing interest in wrecking and salvage, as demonstrated by two recent development applications within the vicinity of this application, and city-wide there have been a total of 10 requests in the last two years.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The recommended conditions of approval are designed to minimize foreseen impacts to nearby property owners.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Approval would provide another location for the disposal of scrap material. Denial would presumably present the prospective purchaser with delays that could result in a loss of income and business opportunity.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The request is in conformance with adopted plans as described in the conformance with plans and policies section located above.
6. Impact of the proposed development on community facilities: Existing community facilities are in place to address anticipated demand on community facilities. Truck traffic would potentially increase but the streets in the area were developed to accommodate industrial traffic.

**DALE MILLER**, Planning Staff presented the Staff Report.

He reported that Cargill was not related to this application, it is an application by Midwest Scrap Management, Inc. He said the sale had not been finalized when the ownership list was received from the title company. He reported that eight to nine people spoke in opposition to the proposal at the DAB VI meeting. He said the DAB voted 5-0 to recommend denial of the request. He said he would like to address some of the questions that came up at the DAB meeting in case the same issues come up today. He said the Glickman northern property line is 640 feet from 29<sup>th</sup> Street and he said 29<sup>th</sup> Street is 571 feet from the rear of the existing (formerly Cargill) building at the site. He said another issue that was discussed was the 2005 application located further north of 33<sup>rd</sup> Street on St. Francis which was the Campbell's wrecking and salvage application. He said that case was put on hold by the MAPC while staff developed an amendment to the Unified Zoning Code (UZC) which would have liberalized the recycling processing code. He said that proposed amendment was denied by the MAPC. He said the Campbell's took their case to the City Council who in turn denied their proposal.

**MITCHELL** asked so to the best of staff's knowledge the Campbell operation is still going on.

**MILLER** said yes. He said the original legal use is going on, but they did not get approved for the extra recycling processing they requested. He said how legal the operation is today may be debatable.

**BOB KAPLAN, AGENT FOR THE APPLICANT** introduced **NICK HAYES, MIDWEST SCRAP MANAGEMENT, INC.** who he said will be managing the local facility if the proposal is approved. He showed a short slide presentation of the operation including the proposed sample screening fencing, which was cast concrete. There was also a short slide presentation entitled "Today's Scrap Recycling Industry" by the Institute of Scrap Recycling Industries, Inc.

**KAPLAN** commented that **MR. HAYES** was present to answer any questions regarding the operational aspect of the proposal. He said **RUSS EWY, BAUGHMAN COMPANY, PA.**, was present to speak to the land plan and **GRANT TIDEMANN, J.P. WEIGAND**, was present to discuss finding an available site. He said this site they have acquired is appropriate for this type of business because it is in a GI General Industrial zoned district. He said the Bridgeport area permits outright most manufacturing and large industrial uses such as asphalt and concrete plants, gas and fuel storage, landfills, rock crushing operations, transfer stations and wrecking and salvage operations. He said Bridgeport is an industrial area and that is why it is zoned the way it is. He said what they propose is similar to the Glickman Iron and Metal shredder next door, which they feel is the beauty of the site, a similar use already exists in the area. He said they will build screening along 29<sup>th</sup> Street and have no plan to do anything with the building so that will remain as is to buffer and screen to 29<sup>th</sup> Street. He said the operations and shredding will take place on the south side of the site. He said all non-ferrous metal will go inside the warehouse. He said steel will be stored outside. He said GI is the most intensive zoning district. He said this proposed use complies with the 2030 Functional Land Use Guide and also with the 21st Street North Corridor Revitalization Plan. He said the property is attractive because it is already zoned properly and it is next to rail service which is critical to a wrecking/salvage operation. He said all scrap materials are shipped out by rail car. He said there are environmental monitoring wells on site; they have a dust suppression system and they will screen off the shredder. He said they feel all conditions in the Staff Report are appropriate and they will comply. He said they located this property after a two-year search and that Midwest Scrap Management will be investing approximately \$20 million in the operation. He said they operate "state of the art" facilities and referred Commissioners to the booklet distributed as a handout with pictures of the Kansas City operation. He said he understood the neighborhood opposition and the complaint that the storage piles exceed the height of the screening fence, but he said they will have those two objections no matter where they go.

**MOTION:** To give the agent/applicant an additional two minutes.

**HENTZEN** moved, **DOWNING** seconded the motion, and it carried (11-0).



**NICK HAYES, MIDWEST SCRAP MANAGEMENT, INC., 5539 RUSSELL STREET, MISSION, KS** said this will be a “state of the art” shredding operation. He said they will invest \$20 million in the shredder alone in addition to the property, equipment and additional materials they will acquire for the site. He said this site will be built from the ground up and will be environmentally compliant. He said there is ground water monitoring on site and they will use a closed-loop water injection system to keep dust down. He said the closed loop system injects water into the mill where the material is shredded and the system recycles the water. He said the machine will have a screen over the area where material falls. He said they use a product called “Fluff” for trash which is a favorite of local landfills because it provides a top coat which helps with odor control. He said the system they would like to install shreds 300 tons an hour. He said it can shred one car and sort it every 15 seconds. He said all cars will have gas tanks and fluids removed from the cars before shredding. He said they will be generating additional revenue streams for materials, equipment, trucks, etc. to service customers in the area.

**HILLMAN** asked about a fence tall enough to cover and shade materials.

**HAYES** said the piles of material will be right around 30 feet which is what they keep at their current location. He said the material will be piled in the middle of the operation and he didn’t know what height would be high enough to cover that. He said the machine processes materials very quickly so the majority of piling will be about the size of a fist and that will be shipped out to be reused. He said they will build a cast concrete fence to the height that is required.

**MARNELL** asked about the existing shredder that has explosions and asked if that was from the gas tanks?

**HAYES** said yes, but they will require that gas tanks be removed before they accept cars at this facility.

**MITCHELL** clarified that **MR. KAPLAN** said the proposal complies with the 2030 Functional Land Use Guide.

**KAPLAN** replied yes sir it does.

**MITCHELL** asked how many employees are anticipated at this operation.

**KAPLAN** said between 30-40 initially, and probably expanding to 50-60 and they will not be minimum salary jobs, but skilled individuals like truck drivers and machine operators, which he said they believe fits the description of “employment industry center.”

**KLAUSMEYER** asked for a clarification on the screening.

**KAPLAN** said the fence will be solid cast concrete. He said the UZC requirement is eight feet in height; however, they will take the fence to any reasonable height that the Commission requires.

**RICK LOWE, 1509 SOUTH SPRINGHOLLOW CIRCLE** said he owns and operates a business in Bridgeport and that he was present as President of the Bridgeport Area Business Association (BABA) which was founded in 2007. He said one of the first things the Association did was contact city staff and start working on land use issues just like the type of things that are being discussed today. He commented that the group has a great deal of regard for Planning Staff and their tremendous help with what the Association is trying to do in the Bridgeport area. He said there are several reasons why BABA members object to this proposal. He said he would like to take exception to staff’s findings, specifically item #5 on page 4. He said he was not sure if he agreed with the comment that this is in accordance with the Comprehensive Plan, especially the 21<sup>st</sup> Street North Corridor Revitalization Plan. He mentioned a previous case which was CON2005-11, a conditional use for wrecking and salvage that was denied because of the conflict between the proposed use and the 21<sup>st</sup> Street North Corridor Revitalization Plan and added that property was not located on an arterial. He also mentioned item #3 which talked about the

extent to which removal of the restrictions will detrimentally affect nearby property. He said the salvage piles can be up to 30 feet high. He said at the company's current operations in Kansas City, (which another speaker has pictures of) the piles look to be considerably taller than that. He said an eight-foot screening fence is not going to do a whole lot to block a 30-foot pile of scrap metal. He said it is impossible to have a 30-foot high pile of metal with only a 150-foot setback from the arterial and not have a detrimental effect on nearby property. He reiterated that DAB VI voted unanimously to deny the request. He referred to the booklet entitled "Bridgeport Area Business Association – Working Together for Business Success" which highlighted the types of businesses that are located in the Bridgeport area. He said although it is a GI zoned area which is the heaviest use in the zoning code, a lot of the businesses in the area are very nice, high quality, very pristine and if this request is approval, it will be very detrimental to the businesses in the area. He mentioned several other businesses that have located to Bridgeport and made multi-million dollar investments in the area.

**MITCHELL** asked for an estimate of the number of employees in the Bridgeport business district.

**LOWE** responded off the cuff between 5,000 – 6,000 people.

**HILLMAN** commented that there were nice businesses in the area that he has visited and done business with and he appreciates what they are trying to do. He said he noticed Glickman, as well as a number of other salvage yards, was not one of their members. He asked if BABA has approached those people.

**LOWE** said yes. He added that BABA refers to itself as the area east of Broadway; west of I-135; south of the Big Ditch; then south of 29<sup>th</sup> Street to 25<sup>th</sup> Street. He said they have members south of 29<sup>th</sup> Street, but Glickman is not on the list because they have not joined BABA. He said Glickman has talked to them about on-going land use issues and cleaning up the area.

**HILLMAN** asked if they have had discussions concerning screening fences or containment of blowing of trash.

**LOWE** responded to date, no they haven't

**HILLMAN** asked if the Commission approves this application, will BABA have interactions with this group.

**LOWE** said that discussion is appropriate for this board to have if the application is approved it is reasonable and prudent for this body to discuss types of restrictions such as the height of the screening and depth of setback. He said he doesn't think the 150-foot setback noted in the report is adequate. He said that would allow the piling of scrap three to four stories tall north of the frontage of the building. He said if the application is approved there is nothing that would keep them from tearing the building down and stacking material up to 29<sup>th</sup> Street.

**LEONARD HICKS, 2230 CARDINAL DRIVE, MEMBER OF BABA** said he owns two buildings in the Bridgeport area. He said he took time to take pictures of Midwest Scrap Management's Kansas City operation, which he referred to in a presentation. He mentioned a conditional use case from 2003 that requested expansion on 21<sup>st</sup> Street east of Broadway and at that time Planning Staff stated expansion of salvage operations in this corridor was a major concern due to the recruitment and retention of industrial businesses. He said he has previously lived in Kansas City and that there was a constant problem with salvaged cars because the salvage yards did not take gas tanks. He said the gas tanks were basically thrown all over the city. He said 135 is an elevated expressway that looks down into this area. He said an eight to ten-foot screening fence is not going to help. He said the gas tanks are a major concern of his. He concluded by stating that Glickman was a non-conforming site that should not be taken into consideration to accept this use. He referred to the picture presentation which showed that most of the piles were over 30 feet tall.

**FARNEY** asked if that location was in the state of Kansas or Missouri.

**HICKS** said Kansas City, MO. in a hidden area so the fencing was not as critical.

**TOM OLSEN, EXECUTIVE VICE PRESIDENT, HOC INDUSTRIES, 3511 NORTH OHIO** said he has worked for HOC Industries for 29 years. He said they moved to Bridgeport in 1997, when there wasn't much up there. He said within the last 10 years millions of dollars have been invested in property in the area including several Fortune 500 companies including Wal-Mart, Family Dollar, Dollar General, Coleman Company, U.S. Department of Defense, Bed Bath and Beyond and many others. He said they have corporate clients that come to their offices. He said Johnson Controls, who has 1,200 employees, also has corporate clients coming in and they were a major objector to the 2005 application that was eventually rejected by the MAPC. He said they have spent millions of dollars to make a nice business park in this area. He said he understood that there has to be recycling somewhere, but that there were certain things that just do not fit in this area. He said the Planning Department is currently working with BABA to create a "protective overlay" which will give them the opportunity to attract other quality businesses into the area who may employ 500-1,000, and they have the area to do it up there. He said these types of businesses are not going to move into areas that have salvage yards, he can guarantee and in fact, some businesses may move out if this continues to happen. He said once these things are approved it opens "Pandora's Box" for those types of businesses to come in all over the area. He said BABA has made tremendous strides and they would appreciate it if they didn't go backwards. He reiterated that DAB VI recommended denial. He said this business is just not a fit for the business park. He said the Planning Department is currently working on a protective overlay for the area and added that there are several types of businesses they would like to exclude including wrecking and salvage type operations. He said a wrecking and salvage yard is not a "permitted business" in GI zoning. He said it is only permitted with a conditional use. He said he thought it was kind of arrogant to buy a property and spend that much money knowing you haven't got permission to use it as a wrecking and salvage yard. He referred to a map which showed the businesses that are willing to agree to the protective overlay. He said they defined the Bridgeport area as businesses on Meade, 25<sup>th</sup> Street, Ohio and boundaries of Broadway, 135 and 29<sup>th</sup> Street. He said the owner of the company owns a lot of property in the area and they are concerned about the value of their properties falling. He said they have one piece of property directly across the street from this site and they are scared to death that the property will be worth zip if this conditional use is approved. He concluded by asking the Commission to support denying this application.

**MARNELL** asked if the Glickman Salvage operation has been there for an extended period of time?

**OLSEN** said Glickman has been there since they moved in 1997.

**MARNELL** asked about another salvage operation north of 29<sup>th</sup>

**OLSEN** said the only other one he can think of since 1986-87 is the Campbell's, but he said that is very limited but neighbors say they are not abiding by the limitations on which they received the permit.

**MARNELL** asked what type of business was that.

**OLSEN** responded a recycling business but they are not supposed to be doing any industrial recycling.

**MARNELL** asked if he had any idea how long that business has been there?

**OLSEN** said a couple of years.

**MARNELL** commented then it is relatively new, but Glickman has been there a long time.

**OLSEN** said yes it has and been a physical blight to the area for a long time.

**MARNELL** commented so your company still chose to build there anyway?

**OLSEN** said yes they did.

**BOB ALDRICH, VICE PRESIDENT FOR WINDY CITY RAILWAY SERVICES, MEMBER OF BABA** said for the last couple of years BABA has been working with Planning Staff to develop a protective overlay to limit the type of businesses that are going into the Bridgeport area such as salvage yards, rock crushers and sexually oriented businesses. He said this is a very pristine industrial park area with nice, clean types of businesses. He said a salvage yard will have a detrimental effect on the other businesses in the area. He said these businesses have sunk millions of dollars into their businesses and clean up of the area. He said at one time it wasn't so nice up there. He said these businesses employ 6,000 plus employees. He said this area is literally the gateway to the northern part of Wichita along I35. He said the first thing you see is this nice industrial park area. He said if this salvage yard is approved, it will be the first thing that will hit you as you drive into Wichita and it will have a negative effect on Wichita. He mentioned the photographs of the Kansas City operations with a crane and a pile of scrap that is well over 60 feet high. He said no screening, unless you come up with a bubble, is going to hide that from the area. He said he believes this is going to have an adverse affect on some of the other businesses and he is afraid that once the door is opened up, they will not be able to stop it because of the zoning. He said just because it is a GI area and everything is allowed in there but the kitchen sink doesn't necessarily mean that all types of businesses are appropriate for the area. He said especially after they have spent many hours developing the protective overlay. He said it is very rare that businesses come in and police themselves. He said this is a unique area to the City. He concluded by asking the Planning Commission to deny this because this would have an adverse effect on what they are trying to do in the area. He commented that Campbell Recycling is very limited in what they can do, but they are doing baling, scraping and processing which they do not have permission to do. He said they came back to the Commission and tried to get approval but he recalls that Commissioner McKay commented at the time of the denial that it would have an adverse effect on the quality type industrial park they are trying to do at Bridgeport.

**MARNELL** asked if the type of business he conducts at his location could be conducted in a lower zoning classification than GI.

**ALDRICH** said his office is located downtown, but he is a member of BABA. He said he buys and sells railroad car parts, so that is not an issue with the Bridgeport area.

**RITA \_\_\_\_\_ HOSPITALS OF HOPE, 3545 NORTH SANTA FE** said she was present to express her concern about this issue. She said she agreed with Mr. Lowe and Mr. Hicks and said there was no way that this kind of visual blight and noise pollution will not affect property values in a negative way. She said they are also concerned that this may cause increased crime by lowering property values and providing motivation for crime. She said they have had issues in the past when parts were stolen off of their vehicles for scrap and they are concerned that this could happen again.

**MARNELL** asked if she knew if Hospitals of Hope could operate in lower zoning than GI.

**RITA \_\_\_\_\_** said they are a non-profit organization with an office and warehouse located in Bridgeport and that she didn't know exactly what the zoning requirement would be for that.

**DENISE GERBER, 2612 N. LONFELLOW, FINANCIAL MANAGER AND RECORDING SECRETARY FOR MOORES COLLECTIONS, LLC.** she said Moores Collections invests in commercial real estate and leases property for rental income. She said typically they hold real estate long term and acquire quality and functional properties in good locations and lease them to financially sound and quality tenants that take pride in operating their businesses at these locations. She said last June the company acquired 3030 N. Ohio, which is located two blocks east of 29<sup>th</sup> Street and Meade. She said this 10,000 square foot warehouse is located in the Bridgeport Industrial Park and they have made a

substantial investment. She said they were successful in leasing the property in less than 6 months to a truck servicing operation, which they felt was good considering the downturn in the economy. She said the tenant and company have made substantial investments in property improvements. She said their major concern is retaining the economic value in this property. She said they are worried that the market value of this property will be difficult to sustain if this conditional use for a scrap yard is approved. She said they worry if they will have difficulty retaining their current tenant or attracting any future tenants. She said they are also concerned about visual blight. She asked the Commission to visualize three floors of piled junk cars or scrap metal. She also mentioned potential noise, airborne and ground pollution, and extra traffic. She said they believe allowing a wrecking and scrap operation will detract from other businesses in the area and negatively affect property value; therefore, they oppose the proposed conditional use.

**JOHN C. WADSWORTH, 1418 SPORT OF KINGS, PRESIDENT AND OWNER, PIPING AND EQUIPMENT CO., 1111 EAST 37<sup>TH</sup> STREET NORTH** said they are a 64-year old mechanical contractor that builds refineries, power plants, pipelines and other stuff that people don't want in their backyard. He said they have been in the Bridgeport area for 64 years and employ anywhere from 150-300 employees on a full-time basis and spend between \$10-\$15 million dollars per year in salaries. He said they were located on North Topeka Street, but three years ago he purchased property on North Ohio and 37<sup>th</sup> Street and has invested approximately \$3.5 million dollars on that manufacturing facility that includes an office building and fabrication shop. He said he is against the proposal and staff report and recommendation. He said he believes they need to ask more questions on some of the staff report recommendations. He specifically referred to page 4 of the report, item #5 that talked about storage of materials, bales, and scrap metals on surfaces approved by the Office of Central Inspection (OCI). He said he did not know what an "approved surface" was and he said he was not sure whether OCI has the staff to enforce that, which he said has been proven over and over again by the condition of the Campbell Scrap Yard. He said the Campbell Recycling Center has a lot of industrial waste that is not permitted but they continue to be in operation. He referenced item #7 that talked about "storage of all metals shall be organized and in an orderly manner." He said he was not sure what that definition means. He asked how you store scrap metal that is over 30-feet tall. He mentioned Cornejo's storage of materials in south Wichita and said he assumed that was considered orderly. He mentioned item #9 which talked about weed control. He said he would like to know how to do that on his eight acres because weeds are very tough to control. He mentioned Kansas Department of Health and Environment (KDHE) regulations and said he would like to know how you take in salvage vehicles without liquids. He asked how you get liquids out of vehicles and motors. He said he understands gas tanks will not be part of this process and will be disposed of in other places. He concluded by saying in short Piping and Equipment located on North Ohio is against staff's recommendation without further information.

**MARNELL** asked if Mr. Wadsworth's manufacturing facility required GI zoning?

**WADSWORTH** responded yes, their operation requires GI type zoning. He added that when he was recruited to move his business to Park City, he decided to stay in the Bridgeport area because of the zoning and the location of the highways. He also said he believed the Siemens plant would have been located in Wichita if the city had done a better job of promoting the Bridgeport area.

**LOU EFTINK, PRESIDENT OF DESIGN BUILD CONSTRUCTION** said he also bought property a couple of years ago at **1330 E. 37<sup>TH</sup> STREET NORTH**. He said he is a member of BABA who has been working diligently on a protective overlay. He said he strongly opposes this proposal, not because he agrees there are areas that you can put this operation other than GI. He opposes it because the applicants themselves said everywhere they go they are opposed to. He said because they pile trash so high and then only have an eight-foot fence, they are not trying to be a good neighbor. He said he does not have the answer. He said he knows things can be done inside and that things don't have to be piled 30-feet high. He said these are not even options. He said once they move in, they can pile debris 30-feet high and are not limited to three stories; it can be up to four and five stories. He said we can't control it. He said just because Glickman is there, they can't change that but they don't have to compound it. He said they are

just asking that they become a good neighbor and figure out a solution. He said they are the ones bringing this problem into the area. He said anyone in this room who owns property knows this is not going to increase the value of their property. He said he strongly opposes this until they come up with an environmentally friendly plan to be in an upper end industrial zone. He asked the Commission not to accept the proposal as it was presented today. He said once they are there OCI does not have authority to enforce the conditional use and the language is so generic, how do they enforce it? He asked how you define controlling weeds. He said they are battling in other areas and when it is brought to the City's attention, someone says that is acceptable. He concluded by saying that the City spends a lot of time trying to enforce something that just should not have been approved to begin with.

**KAPLAN** referred to a map that depicted 12 recycling facilities, scrap facilities, and auto recycling facilities between 21<sup>st</sup> and 31<sup>st</sup> Streets, and from the Bypass to Broadway. He said those are similar industries to what he is seeking a conditional use for today. He said there are one dozen of them and there is a reason they are located within this area. He said they are not there coincidentally or by accident. He said they are there because that is the area that was designed and planned to house them. He said they are concentrated in that area for a reason, it just didn't happen. He said that is where the City put them because that is the suitable area for them. He said they have GI zoning and access to rail. He said he tries very hard not to put on his lawyer's hat and not to get adversarial at administrative hearings; he saves that for the courtroom. He referred to several slides of areas located in Bridgeport. He said the slides are self-explanatory. He said they have heard that this is a pristine area. He mentioned the recycle oil plant, trailer storage and a pipeline. He commented these slides are the nature of area the area and that is what you see from 135 and the immediate neighborhood. He said this is an industrial park that houses many recyclers and salvage operations. He concluded by saying that he tried very hard to get a meeting with these folks to discuss these matters and said he got no response.

**HENTZEN** asked when this area for this type of activity was established by the City?

**MILLER** said between 1937 and 1958. He said when researching that question, he found a 1937 map that showed "F" Zoning which was the old heavy industrial designation south of 29<sup>th</sup> Street, then in 1958 there was a City map that showed heavy industrial zoning up to 37<sup>th</sup> Street.

**SHERMAN** referenced a letter in the applicant's packet from Westar Energy concerning energy estimates from someone who reports to him. He said this was a service Westar provides to all new customers. He asked if that put him in conflict on this proposal.

**LANG** said he would not think that would cause a conflict of interest. He said that was someone providing information and not part of the application.

**HENTZEN** said he should ask the same question, since he owns and operates out of 3711 N. Hillside.

**LANG** said that address was not located in the notice area for this application.

**MITCHELL** said he was going to recommend denial of the application on the basis that it is not compatible with the 2030 Functional Land Use Guide; does not increase the potential for employment and it has not been shown to be a compatible use for this area.

**MOTION:** To deny the application.

**MITCHELL** moved, **HILLMAN** seconded the motion.

**MARNELL** said he was going to be the "odd man out" today. He said he was going to make a substitute motion to approve per staff comments. He said he has commented before that this is zoned GI, which is the most heavily zoned area the City has. He said since the 1970's the City has spent a lot of money dealing with groundwater issues in the Bridgeport area to make the land usable for industrial use. He said

he believed some purchasers took advantage of the lower land costs in the area and now want to have the area be something other than what it is which is a heavy industrial area. He said that is why he is making the motion.

**SUBSTITUTE MOTION:** To approve subject to staff recommendation. (And later added a 35-foot height restriction and that no materials could be stored outdoor further north than the south side of the existing building.)

**MARNELL** moved, **SHERMAN** seconded the motion.

**SHERMAN** asked if there was any limitation on how high the stacks can be.

**MILLER** said he couldn't remember if there was a height limit in the zoning district, but said typically that is a building issue which means it is unlimited, other than just being able to hold the pile with a slope.

**SHERMAN** asked if it was prudent to amend that motion to have a height limit.

**MILLER** responded that the Commission could place a maximum height limit.

**MILLER** commented there was an 80-foot building height limit.

**MARNELL** suggested a maximum of 35-feet in height.

**HAYES** commented that they would be okay with 35-feet if that is what it takes to satisfy the Commission.

**HILLMAN** asked if they would be willing to build a 35-foot wall.

**HAYES** said he didn't know if that was possible. He said they would like to work with the Commission, but he didn't know about that.

**HILLMAN** suggested a 20-foot wall and limiting the stacks to 20 feet.

**HAYES** commented that 20 feet was pretty low and they would rather get approval for something that was 30-35-feet high.

**SHERMAN** asked about the buffer from 29<sup>th</sup> Street.

**HAYES** said the building was going to remain, but if the Commission would like more restrictions where they are actually storing materials outside, they would be fine with that. He said they have no intention of storing materials in front of the building on 29<sup>th</sup> Street.

**KAPLAN** asked for clarification on the height restriction.

**SHERMAN** said 35-feet from the motion maker.

**KAPLAN** replied that they would accept the lesser height restriction if that was the will of Commission.

**MARNELL** said he would like to change the substitute motion to include a 35-foot height restriction; and no materials being stored outdoor further north than the south side of the building.

**HILLMAN** asked the motion maker if he wanted to add anything to the eight-foot designated wall.

**MARNELL** responded that he didn't think there was anything you can do in terms of the interstate being an elevated road. He said as far back from 29<sup>th</sup> Street as this operation is going to be, he said he believes it will pretty much over most of the operation.

**FOSTER** asked if there has been any discussion about limits of the proposed protective overlay within this GI zoning

**MILLER** deferred to **DONNA GOLTRY**, Planning Staff.

**GOLTRY** said geographically the protective overlay mostly focused on 29<sup>th</sup> Street and south. But he may want to ask the members of BABA who were present for clarification on that.

**FOSTER** clarified that if for unknown reasons the building is taken down at the site, the only requirement is an eight-foot solid screening 150 feet south of 29<sup>th</sup> Street.

**MILLER** asked for clarification of the current motion to see if the height of the screening was higher than the 8-feet required by the UZC.

**FOSTER** asked for clarification on the protective overlay limits.

**MILLER** explained that the property owners in the area submitted a proposal, but that staff doesn't have anything drafted up yet.

**HENTZEN** said this question applies to the bigger picture of Wichita and Sedgwick County because of the hundreds and of thousands of cars. He asked what are we going to do about them if we can't put them in the lowest zoning area that the City has? He said this is a real problem and suggested that they get it settled because they spend three to four hours on discussion every time there is an application for a salvage yard. He said what are they going to do and what should they do?

**DIRECTOR SCHLEGEL** commented that sounded more like a rhetorical question. He said Wichita-Sedgwick County does not have a wrecking/salvage yard plan. He said each case is addressed on a case-by-case basis, with each case being judged on its individual merits.

**MITCHELL** asked that the map be displayed reflecting salvage operations in the area. He said with all those salvage companies in one area, it doesn't seem to him like there is a pressing need to add one more.

**HENTZEN** said he thinks it is pressing with the number of cars in the area.

**SUBSTITUTE MOTION PASSED (6-5).**

**DOWNING, HENTZEN, HILLMAN, MILLER STEVENS and MITCHELL – No.**

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**NON-PUBLIC HEARING ITEMS**

- 10.** Case No.: Property owner request to determine if the zoning on a property located at 1441 North Santa Fe is appropriate

William MacPherson owns the property located at 1441 North Santa Fe that is currently zoned B Multi-family Residential ("B"). Mr. MacPherson bought the property in 2003, and developed it with a commercial building that he currently leases. When Mr. MacPherson bought the property, it was zoned LI Limited Industrial ("LI"). Apparently in 2004, when the Midtown Neighborhood Plan and its associated re-zoning of individual properties to match the lots' use



Mr. MacPherson's property was re-zoned from LI to B. He recently received a notice of violation from the Office of Central Inspection and visited the planning department to determine his options to restore the property's LI zoning.

Section V-A.1 specifies that the Metropolitan Area Planning Commission (MAPC) or the governing body may initiate any action permitted by the Unified Zoning Code. It would be appropriate for the MAPC to authorize staff to initiate a re-zoning application for LI zoning for 1441 North Santa Fe.

**DALE MILLER**, Planning Staff presented the Staff Report.

**DIRECTOR SCHLEGEL** commented that they believe this happened when the Midtown rezoning initiative took place.

**MOTION:** To authorize staff to initiate a re-zoning application for LI Limited Industrial zoning for 1441 North Santa Fe.

**MITCHELL** moved, **HILLMAN** seconded the motion, and it carried (11-0).

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The Metropolitan Area Planning Department informally adjourned at 4:50 p.m.

State of Kansas                )  
Sedgwick County            ) <sup>ss</sup>

I, John L. Schlegel, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on \_\_\_\_\_, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
John L. Schlegel, Secretary  
Wichita-Sedgwick County Metropolitan  
Area Planning Commission

(SEAL)